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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6391 65409
Administrative Orders:
Presidental Determinations:
92-6 of December 6, 1991 65171
92-7 of December 6, 1991 65173
92-8 of December 6, 1991 65175
Memorandums:
December 12, 1991 65413

7 CFR
907 65177

9 CFR
325 65179
327 65179
381 65179

12 CFR
213 65180

14 CFR
39 65181
71 (2 documents) 65182
121 65398
Proposed Rules:
39 (2 documents) 65196, 65197
71 65199
382 65200

15 CFR
Proposed Rules:
Ch VII 65202

24 CFR
92 65312
3282 65183

26 CFR
301 65187

32 CFR
519 65392

33 CFR
165 (2 documents) 65188, 65189

34 CFR
3 65388

36 CFR
327 65190
Proposed Rules:
62 65203

37 CFR
202 65190

40 CFR
Proposed Rules:
51 65203
52 (2 documents) 65203, 65204
60 65203

46 CFR
Proposed Rules:
15 65206

47 CFR
21 65191
65 65192
73 (4 documents) 65194, 65195
74 65191
Proposed Rules:
73 (3 documents) 65206, 65207

50 CFR
Proposed Rules:
17 (2 documents) 65207, 65209
681 65209

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

Presidential Documents

Title 3—

The President

Presidential Determination No. 92–6 of December 6, 1991

Eligibility of the Czech and Slovak Federal Republic To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of the Czech and Slovak Federal Republic will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
December 6, 1991.

[FR Doc. 91–30117
Filed 12–12–91; 3:42 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 92–7 of December 6, 1991

Eligibility of the Republic of Hungary To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of the Republic of Hungary will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
December 6, 1991.

[FR Doc. 91–30118
Filed 12–12–91; 3:43 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 92–8 of December 6, 1991

Eligibility of the Republic of Poland To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of the Republic of Poland will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
December 6, 1991.

[FR Doc. 91–30119
Filed 12–12–91; 3:53 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 724]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 13 through December 19, 1991. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 724 (7 CFR Part 907) is effective for the period from December 13 through December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

The final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and

enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 10, 1991, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 3 opposing, and 1 abstaining, that 1,700,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,700,000 cartons is equivalent to the amount as specified in the Committee's shipping schedule. Of the 1,700,000 cartons, 91.4 percent or 1,553,800 cartons are allotted for District 1, and 8.6 percent or 146,200 cartons are allocated for District 3. Districts 2 and 4 will remain open as they have not yet begun to ship.

During the week ending on December 5, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,595,000 cartons compared with 1,888,000 cartons shipped during the week ending on December 6, 1990. Export shipments totaled 183,000 cartons compared with 227,000 cartons shipped during the week ending on December 6, 1990. Processing and other uses accounted for 263,000 cartons compared with 379,000 cartons shipped during the week ending on December 6, 1990.

Fresh domestic shipments to date this season total 4,311,000 cartons compared with 7,272,000 cartons shipped by this time last season. Export shipments total 675,000 cartons compared with 815,000 cartons shipped by this time last season. Processing and other use shipments total 840,000 cartons compared with 1,530,000 cartons shipped by this time last season.

For the week ending December 5, 1991, regulated shipments of navel oranges to the fresh domestic market were 1,595,000 cartons on an adjusted allotment of 1,717,000 cartons which resulted in net undershipments of 122,000 cartons. Regulated shipments for the current week (December 6 through December 12) are estimated at 2,115,000 cartons on an adjusted allotment of 2,096,000 cartons. Thus, overshipments of 19,000 cartons could be carried forward into the week ending on December 19, 1991.

The average f.o.b. shipping point price for the week ending on December 5, 1991, was $9.85 per carton based on a reported sales volume of 1,273,000 cartons. The season average f.o.b. shipping point price to date is $10.70 per carton. The average f.o.b. shipping point prices for the week ending on December 6, 1990, was $8.73 per carton; the season average f.o.b. shipping point price at this time last year was $9.43.

The Department's Market News Service reported that, as of December 10, demand for 113s and choice 72–88s sizes is very good, with demand reported as moderate for other sizes. Prices for sizes 113s, first grade 32–56s, and choice 88s are higher, while choice 32–56s are lower. Prices for other sizes are reported as about steady.

Committee members discussed implementing volume regulation at this time. Some Committee members commented that the market is stabilizing, however, it was reported that the fruit is continuing to develop slowly. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment, indicating that such action would provide enough product to meet demand without encouraging the shipment of smaller fruit and price discounting.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from December 13 through December 19, 1991, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on December 19, 1991, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 10, 1991, and this action needs to be effective for the regulatory week which begins on December 13, 1991. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1024 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1024 Navel orange regulation 724.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 13 through December 19, 1991, is established as follows:

(a) District 1: 1,553,800 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: 146,200 cartons;
(d) District 4: Unlimited cartons.

Dated: December 11, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–30031 Filed 12–12–91; 9:17 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 325, 327 and 381

[Docket No. 86–031F]

RIN No. 0583–AA94

Movement of Imported Product Prior to Reinspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On May 13, 1988, the Food Safety and Inspection Service (FSIS) published a proposed rule that would have required imported meat and poultry products to be reinspected at their port of first arrival. In addition, the proposal would have eliminated the official import seal and current sealing requirements for imported product which is transported before reinspection. The proposed rule was developed to carry out an audit recommendation of the USDA Office of Inspector General (OIG). The audit report noted that neither FSIS nor the U.S. Customs Service was able to ensure adequate physical or administrative controls when imported product was transported to and reinspected at locations other than the port of arrival. FSIS has determined that costs involved with the portion of the proposed rule that would have required reinspection at the product's port of first arrival outweigh the potential benefits. Therefore, that portion of the proposed rule is being withdrawn. However, FSIS is amending Parts 325, 327 and 381 of the Federal meat and poultry products inspection regulations to eliminate the official import seal and current sealing requirements for imported product which is transported before reinspection.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–3473.

Executive Order 12291

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant effect on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Elimination of the official import seal and attendant sealing requirements is expected to have a positive impact on transportation entities, importers and importing establishments. Any delays which have resulted while product was being sealed or unsealed will be eliminated, which will facilitate the transportation and inspection of imported products.

Background

On May 13, 1988, FSIS published a proposal to amend parts 325, 327 and 381 of the Federal meat and poultry products inspection regulations to remove current provisions that permit the transportation of imported product prior to reinspection by FSIS (53 FR 17059). Instead, FSIS proposed to require that imported product be reinspected by FSIS at the product's port of first arrival. FSIS also proposed to eliminate the official import seal and current sealing requirements for imported product that is transported prior to reinspection. These actions were in response to an OIG audit recommendation stating that FSIS should "require that foreign meat products entering the United States be inspected by the Import Inspection Division only at the port of first arrival."

The proposed changes were intended to enable FSIS to better ensure reinspection of all meat and poultry products entering the United States. A considerable number of the public comments received opposed the change that would have restricted reinspection of imported product to its port of first arrival. Commenters expressed concerns over the potential for: economic hardship; hinderance of free trade/free enterprise; delays at ports; violation of the Tariff Act which provides a legal right to move product in bond; a non-tariff trade barrier; and interference with inter-modal transportation technology.

FSIS does not intend to proceed with the portion of the rulemaking that would have restricted reinspection of imported product to its port of first arrival. The public comments have persuaded the Agency that the public benefits to be derived by this proposed change do not outweigh the public and private costs that it would generate. Therefore, imported meat and poultry products will continue to be reinspected by import inspectors at either the port of entry or at another port location.

FSIS is proceeding to amend §§ 325.1, 327.7, 327.22 and 381.200 of the Federal meat and poultry products inspection regulations (9 CFR 325.1, 327.7, 327.22 and 381.200) by eliminating the provisions which require that conveyances in which imported product is transported prior to reinspection be sealed and to eliminate the official import seal.

Currently, §§ 325.1, 327.7 and 381.200 of the Federal meat and poultry products inspection regulations permit

imported product to be unloaded at the port of first arrival or if arriving by water, from the wharf where unloaded, and then transported, under official seal, to another location where import reinspection is to be conducted. These regulations also provide specific, extensive sealing requirements for any transportation of imported product prior to its reinspection. Currently, before product that has not been reinspected at the port of first arrival can be transported, the means of conveyance (car, truck, railcar) must be sealed with an official import seal. The seal must be affixed by either a Program or U.S. Customs employee. Sections 327.7 and 381.200 also allow, in lieu of sealing, for colored placards containing a warning notice to be affixed to the product containers by the importer. Labeling product containers or sealing the means of conveyance assures that the identity of the product is maintained until it arrives at its final destination and is presented for reinspection. Sections 327.22 and 381.200(h) provide the official seal that is to be affixed to conveyances.

However, there is no practical way FSIS can ensure compliance with the sealing requirements. Given the volume of product imported into the United States (2.1 billion pounds per year) and FSIS's limited resources (90 import inspectors), it is physically impossible for FSIS personnel to seal each conveyance in which imported product might be transported or to break the seals, if affixed, once product arrives at its intended destination. U.S. Customs' regulations permit movement in-bound without further sealing (provided foreign country seals have been affixed), and Customs does not have the resources to provide special handling services regarding imported meat and poultry products.

FSIS did not receive any comments on the portion of the proposed rule which proposed to eliminate the official import seal and attendant sealing requirements. Accordingly, FSIS is proceeding to eliminate the official import seal and the sealing requirements.

FSIS is making two editorial changes to the titles of §§ 327.7 and 381.200. In the May 13, 1988, proposal, the word "bond" and the words "delivery under bond" in §§ 327.7 and 381.200, respectively, were inadvertently not included as part of the titles. FSIS did not propose any changes to the provisions in the regulations concerning the transportation of imported product under Customs bond, and this final rule retains those provisions. Therefore, the titles of the two sections have been revised to include the missing words.

List of Subjects in 9 CFR

9 CFR Part 325

Meat inspection, Transportation.

9 CFR Part 327

Imported products, Meat inspection, Seals and sealing.

9 CFR Part 381

Imported products; Poultry products inspection; Seals and sealing.

Accordingly, title 9 of the CFR is amended as follows:

PART 325—TRANSPORTATION

1. The authority citation for part 325 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

1a. Paragraph (b)(2) of section 325.1 is revised to read as follows:

§ 325.1 Transactions in commerce prohibited without official inspection legend or certificate when required; exceptions; and vehicle sanitation requirements.

* * * * *

(b)(1) * * *

(2) Product imported into the United States may be transported and offered or received for transportation if such product is conveyed in railroad cars, trucks or other means of conveyance, prior to inspection, to an authorized place of inspection, as provided in § 327.6 of this part.

* * * * *

PART 327—IMPORTED PRODUCTS

2. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

3. The title of § 327.7 is revised to read as follows:

§ 327.7 Products for importation; movement prior to inspection; handling; bond; assistance.

§ 327.7 [Amended]

4. Paragraphs (a), (b), (c), and (h) of § 327.7 are removed.

§ 327.7 [Amended]

5. Paragraphs (d), (e), (f) and (g) of § 327.7 are redesignated as paragraphs (a), (b), (c) and (d).

§ 327.22 [Removed and Reserved]

6. Section 327.22 is removed and reserved.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

7. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

8. The title of § 381.200 is revised to read as follows:

§ 381.200 Poultry products offered for entry, retention in customs custody; delivery under bond; movement prior to inspection; handling; facilities and assistance.

§ 381.200 [Amended]

9. Paragraphs (c), (d), (e), (f), and (h) of § 381.200 are removed.

§ 381.200 [Amended]

10. Paragraph (g) of § 381.200 is redesignated as paragraph (c).

Done at Washington, DC on November 1, 1991.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 91–29952 Filed 12–13–91; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–0737]

Equal Credit Opportunity, Consumer Leasing, and Truth in Lending (Regulations B, M, and Z); Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical Amendment; correction.

SUMMARY: The Board published a technical amendment on October 11, 1991, that contains an error in amendatory instruction 1 in part 213.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dale I. Nishimura, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412; for the hearing impaired *only*, contact Dorthea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

In Federal Register Notice (FR Doc. 91-24270) published at page 51322, column 2, of the issue for Friday, October 11, 1991, make the following correction:

On page 51322, column 2, amendatory instruction 1 in part 213 is corrected to read as follows: "1. The authority

citation for 12 CFR part 213 is revised to read as follows:".

Board of Governors of the Federal Reserve System, December 10, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-29899 Filed 12-13-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-227-AD; Amendment 39-8116; AD 91-26-05]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Boeing Model 747-400 series airplanes. This amendment requires the addition of a limitation in the FAA/approved airplane flight manual (AFM) requiring that the right VHF (very high frequency) radio communication system be operational for dispatch. This action is prompted by the discovery of a single point failure within the audio management unit (AMU) that will disable the transmission functions of both the left and center VHF radios. This condition, if not corrected, could result in loss of all VHF radio voice communication transmission capability.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A single point failure within the audio management unit (AMU) used on all Model 747-400 airplanes has been discovered recently. Should this failure occur, the transmission functions of both the left and center VHF (very high frequency) radios will be disabled. The single AMU on the Model 747-400 interfaces with all onboard communication systems, such as: VHF (very high frequency); HF (high frequency); SATCOM (Satellite Communication); ACARS (ARINC Communications Addressing and Reporting System); Ground Crew Call; Cabin Crew Call; and PA (passenger address). It also interfaces with various radio navigation receivers such as: VOR (VHF Omnidirectional Ranging); ADF (Automatic Direction Finder); DME (Distance Measuring Equipment); and ILS (Instrument Landing System). In the case of the VHF system, the AMU sends the microphone input and push-to-talk (PTT) discrete signal to the selected VHF transceiver. It also sends the transceiver audio from the selected VHF transceiver to the flight deck headsets and speakers.

Model 747-400 series airplanes are equipped with three VHF radio communication systems. They are typically identified as: left VHF (pilot), right VHF (first officer), and center VHF. Federal Aviation Regulations (FAR) require that each airplane certificated under FAR Part 25 be equipped with two systems for two-way radio communications, and that the failure of one system will not preclude operation of the other system. Since the Model 747-400 airplane has three VHF radios, dispatch with one of the radio communication systems inoperative is allowed. However, if an airplane is dispatched with the right VHF radio inoperative, a single failure to the applicable circuitry within the AMU will cause loss of the remaining VHF radio voice communication transmission capability.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires the addition of a limitation in the FAA-approved airplane flight manual (AFM) requiring that the right VHF radio communication system be operational for dispatch.

The FAA considers this to be an interim action and will consider further rulemaking when a corrective modification is developed and approved.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-26-05. Boeing: Amendment 39-8116. Docket No. 91-NM-227-AD.

Applicability: All Model 747-400 series airplanes, certificated in any category.

Compliance: Required within 14 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of all VHF radio voice communication transmission capability, accomplish the following:

(a) Add the following statement to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by placing a copy of this AD in the AFM.

Electronic Systems

VHF Radio Voice Communication

Right VHF radio (VHF R) communication system must be operational for dispatch.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The

request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) This amendment (39-8116), AD 91-26-05, becomes effective December 30, 1991.

Issued in Renton, Washington, on December 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-29909 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASW-09]

Revision of Transition Area: Muleshoe, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This corrective action makes an editorial change to the legal description of the Muleshoe, TX, Transition Area. This action is necessary because the original final rule document incorrectly described the coordinates of the Muleshoe Municipal Airport. The intended effect of this action is to provide an editorial change to the description of the Muleshoe, TX, Transition Area.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On October 21, 1991, the FAA published as amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Muleshoe, TX (56 FR 52465).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will correct the coordinates that describe the location of the Muleshoe Municipal Airport. The construction of a new Muleshoe Municipal Airport after the closure of Edward Warren Field and the development of a new standard instrument approach procedure to the Muleshoe Municipal Airport necessitated the original final rule document. The effect of this action will correct the coordinates describing the location of the Muleshoe Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Muleshoe, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Muleshoe Municipal Airport (latitude 34°11'06"N., longitude 102°38'26"W.)

Issued in Fort Worth, TX, on November 20, 1991.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 91-29910 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-07]

Amendment of Renton Control Zone; Renton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Renton, Washington Control Zone is being altered to enlarge the controlled airspace to accommodate a VHF omnidirectional range/distance measuring equipment (VOR/DME) radio navigation (RNAV) approach at Renton Municipal Airport. This will ensure that aircraft operating under instrument flight rules (IFR) and utilizing the new approach will be segregated from other aircraft during the critical phase of flight. The control zone will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 u.t.c., March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Bette VanManen, ANM-538, Federal Aviation Administration, Docket No. 91-ANM-07, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2538.

SUPPLEMENTARY INFORMATION:

History

On May 14, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for establishment of a VOR/DME RNAV approach for Runway 33 at the Renton Municipal Airport, Renton, Washington (56 FR 22129). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes to correct the latitude/longitude for the Renton Municipal and Seattle-Tacoma International Airports and two of the control zone coordinates, which result in no increase in the control zone size, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations adds additional controlled airspace, to the existing control zone, south of Renton Municipal Airport and east of Seattle-Tacoma International Airport. This controlled airspace ensures that aircraft operating under IFR and utilizing the new approach are segregated from other aircraft during the critical phase of flight. The control zone will be depicted on aeronautical charts for pilot reference. The dates and times the control zone are effective will be established in advance by a Notice to Airmen (NOTAM), and thereafter, published in the Airport/Facility Directory.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Renton Municipal Airport Control Zone, Renton, WA [Revised]

That airspace bounded by a line beginning at lat. 47°32'10"N., long. 122°12'40"W.; thence clockwise along an arc of a 3-mile radius circle centered on the Renton Municipal Airport (lat. 47°29'36"N., long. 122°12'52"W.) to lat. 47°27'59"N., long. 122°09'46"W.; to lat. 47°27'38"N., long. 122°09'24"W.; to lat. 47°26'50"N., long. 122°10'58"W.; to lat. 47°23'50"N., long. 122°10'25"W.; to lat. 47°23'38"N., long. 122°13'30"W.; to lat. 47°24'09"N., long. 122°13'36"W.; thence counterclockwise via an arc of a 5-mile radius circle centered on Seattle-Tacoma International Airport (lat. 47°26'57"N., long. 122°18'29"W.); to lat. 47°27'10"N., long. 122°12'05"W.; to lat. 47°28'09"N., long. 122°13'33"W.; to lat. 47°31'27"N., long. 122°13'33"W.; thence to point of beginning. This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on November 27, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-29911 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3282

[Docket No. R-91-1483; FR-2613-F-02]

RIN 2502-AE65

Distribution of Manufactured Home Monitoring Inspection Fees to the State Administrative Agencies

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises 24 CFR 3282.307(b) to provide for a more equitable method of distributing funds to State Administrative Agencies (SAA) to aid them in meeting their manufactured home inspection and inspection-related expenses. The previous method of payment to the SAAs was established by means of a formula specified in 24 CFR 3282.307(b), and had not changed since the inception of the program in 1976. A modified formula for distributing funds to the States was determined to be necessary to provide for a more equitable method of compensation to each State, based on the nature and volume of workload required of the State's SAA. This final rule also revises 24 CFR 3282.11 to remove the prohibition imposed on States to charge a fee for any service provided under 24 CFR part 3282. The Department determined that allowing SAAs to assess their own State-sponsored fees, to defray expenses in excess of funding received from the Department, is crucial to the present and future ability of SAAs to fulfill their responsibilities under the program.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Stuart Margulies, Program Manager, Manufactured Housing and Construction Standards Division, room 9152, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, (202) 708-0584, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5424) (the Act) authorizes the Secretary of the Department of Housing and Urban Development to establish Federal manufactured home construction and safety standards, and to issue regulations to carry out the purpose of the Act. (The manufactured home construction and safety standards promulgated in accordance with the Act appear at 24 CFR part 3280.) The Act also authorizes the Secretary to conduct inspections and investigations necessary to enforce the construction and safety standards, to determine that a manufactured home fails to comply with an application standard or contains a defect or an imminent safety hazard, and to direct the manufacturer to furnish notification thereof, and in some cases to remedy the defect or imminent safety hazard.

The regulations at 24 CFR part 3282 prescribe the investigation and inspection procedures, and provide for the use of private and State inspection organizations, in cooperation with State manufactured home agencies, in the investigation and inspection of manufactured homes. Subpart G of 24 CFR part 3282 sets out the procedures to be followed and requirements to be met by States which wish to participate as State Administrative Agencies (SAA) under the Federal manufactured home standards enforcement program (SAA program). The regulations at subpart G also provide for manufacturers of manufactured housing units to pay to the Secretary a monitoring inspection

fee, in an amount required by the Secretary. The Secretary then distributes the fees among the approved and conditionally-approved SAAs under the conditions, and in accordance with the formula, set forth in 24 CFR 3282.307.

Proposed Rule and Public Comments

On July 2, 1990 (55 FR 27252), the Department published a proposed rule to amend 24 CFR part 3282.307(b) to provide for a more equitable method of distributing funds to SAAs to assist these agencies in meeting the costs of investigation and inspection of manufactured homes. The program provides for SAAs to receive funding, on a formula basis, from label monitoring inspection fees. The present funding formula, found in § 3282.307(b), prescribes payments to the SAAs based on the manufactured home unit's first location. The Department has established, in each SAA's cooperative agreement with HUD, an amount of $12.00 to be distributed to the SAA for each unit sited as its first location within that State. This formula for distribution of funds to SAAs has not changed since the inception of the program in 1976. Accordingly, the Department determined that a modified formula for distributing funds to the States is necessary to provide for a more equitable method of compensation to each State, based on the nature and volume of work-load required of its SAA.

The modified formula proposed by the Department on July 2, 1990 was based on a 36% to 8% ratio. The first percentage (36%) is predicated on where the manufactured home will first be located, and the second percentage (8%) is predicated on where the home is to be produced. (The proposed formula is discussed more fully below.)

In the July 2, 1990 proposed rule, the Department advised that it also was considering amending 24 CFR part 3282 to allow States to assess their own State-sponsored fees to defray those expenses that exceed the Federal funds received. Additionally, the Department proposed to modify the existing cooperative agreements with the States to provide a basis for evaluating the performance of the States, and to permit the Department to implement certain specified actions in the event that States do not comply with the terms of the agreement.

The Department received three public comments in response to the July 2, 1990 proposed rule. The commenters were the Oregon SAA, the Kentucky SAA, and the Manufactured Housing Institute.

The Oregon SAA supported the increase of funding to the States. The Oregon SAA stated that the State of Oregon has been forced to subsidize its SAA. The commenter stated that the increase was considered a step in the right direction, even though the increase will fall short of meeting its costs. The Oregon SAA requested that a refund of fees, not directed to the SAA since January 1989, be made to Oregon manufacturers.

The Kentucky SAA expressed a concern that the rule, as proposed to be revised, would decrease the funding currently provided to Kentucky. The Kentucky SAA stated that its funding falls short of expenses incurred to perform the SAA program, and that a decrease in the dollar amount directed to Kentucky, brought about by the implementation of this rule, would have an even more detrimental effect on the State's ability to carry out the program.

The Manufactured Housing Institute (MHI) stated that changing the method for distributing funding to the States from units to sections would make sense, as it would correspond to the method for collecting fees from manufacturers, and would be more equitable for those States that receive a majority of multi-section homes. The MHI, however, opposed any change in the regulations that would allow fully-approved SAAs to assess their own State-sponsored fees to defray those expenses that exceed federal funds received. MHI stated that the Act envisioned a preemptive program which would provide for uniform monitoring enforcement procedures. Allowing States to assess fees independently would erode this concept and conflict with the statutory requirement. Finally, MHI urged that the Department compensate the States retroactively for fees collected since February 1989.

There also was continued discussion in the comments about whether to change the distribution formula to an exact dollar amount, as opposed to an amount based on a percentage of what was collected. (This ongoing discussion was originally referenced in the preamble of the proposed rule.) After considering both proposals and discussing their merits, the Department incorporated into the proposed rule the distribution formula, mentioned above, which is based on the percentage of fees collected for each transportable section.

The Department, as noted in the proposed rule, estimated that a distribution formula based on a "36% to 8%" ratio would be the most appropriate and feasible ratio for distributing fees to the States. The proposed rule described distribution of funds using the 36% to 8% ratio as follows:

The distribution of fees using this ratio would be administered as follows: 36% of each label assessment received (currently $24.00 per label × 36% = $8.64), would be distributed to each State for each transportable section of each unit sited in the State. In addition, 8% of each label assessment placed on each transportable section of each unit produced in the State ($24.00 × 8% = $1.92) would be distributed to the State where the home will be produced.

The Department computed the dollar amounts and percentages referred to above, predicated on the number of homes and sections of homes produced at that time. The intention behind selecting specific percentages was to provide a more definite form of distribution, but one that would continue to allow the Department some flexibility in adjusting the amount of the monitoring fee collected from the manufacturers.

After discussing the issue, it was determined that, contrary to earlier discussions, the utilization of a percentage would not provide the Department this flexibility. In fact, utilization of a percentage would provide a fixed percentage to the States of any future increase in the fees assessed manufacturers. This could have the effect of requiring the Department to seek a label fee increase larger than intended, in order to satisfy the fixed percentage specified for distribution to the States.

Furthermore, this specified percentage might provide the States with an increase of funds larger than justified.

Accordingly, a distribution of funds to the SAAs as a fixed dollar amount was then considered, as a part of the Department's review of the public comments. Several fixed dollar amounts were suggested and reviewed. The percentage of funding currently distributed to the SAAs is approximately 44% of the dollar amount received from the label fees. It is the current intention of the Department to maintain that percentage. In keeping with State responses to the proposed rule, the Department also intends to direct enough funding to each State so that no SAA would receive an amount reduced from that received on July 2, 1990—the date of the publication of the proposed rule in the **Federal Register**.

Amendments Adopted in Final Rule

1. Distribution of Funds Based on Fixed Dollar Formula

Following the analysis discussed above, and consideration of the public comments on the issue of equitable compensation to SAAs, the Department determined that a more equitable

method of distribution of funds to SAAs is one based on a fixed dollar formula. Accordingly, a portion of all monitoring inspections fees collected by the Secretary shall be distributed to SAAs in accordance with the following formula: a fixed dollar amount of $9.00 for each section of each home sited in a State, *plus* a fixed dollar amount of $2.50 for each section of each home produced in that State.

In consideration of commenters' concerns regarding delays in receipt by the States of increased funding, the Department, when seeking to increase label fees assessed on manufacturers in the future, will begin simultaneously the process of publishing in the **Federal Register** a proposed rule providing for increased funding to the States, predicated on the need at that time. This action should eliminate, or at least minimize, the time lag between a label fee increase and a corresponding dollar increase to the SAAs.

2. Assessment of State-Sponsored Fees by Participating States

The Department would like to minimize the number of times it seeks to increase label fees. One method for doing this is to permit participating States (see § 3282.302) to assess their own State-sponsored fees to defray expenses in excess of funding received from the Department. This will allow the particularized needs of an individual State to be met without requiring a nationwide increase in fees. A State participating as an SAA must provide satisfactory assurance that it will devote adequate funds to carrying out its State plan (see § 3282.302(b)(12). Certain States will continue to incur losses, even with the added funding. These States maintain that they continue to experience difficulties in performing the SAA program adequately. These States, in turn, are violating the regulatory requirement to devote adequate funding to their SAA programs, as a result of not being permitted to charge their own SAA fees while receiving insufficient funding from the Department.

Furthermore, there are SAAs that operate on a budget which does not permit them to borrow from other State programs to subsidize their own SAA program. The ability of these SAAs to assess their own State-sponsored fees to compensate them for incurred losses is crucial to their present and ability to perform, despite the economic differentials which exist among the various geographical areas of the country. State-level assessments would allow those States located within a specific region to seek funding based on the particular economic conditions peculiar to that area. Ultimately, permitting States to assess needed fees most likely would benefit not only the States and consumers, but also the home manufacturers, since the home manufacturers would incur added fee assessments only infrequently from certain fully-approved States. (See § 3282.302.) The need for the Department of seek added broad-based nationwide assessments of manufactures would become more limited. Finally, the preemption provisions of the statute do not affect this action. Preemption goes only to the avoidance of conflict between Federal and local construction standards—not to methods for funding the various SAAs.

Consequently, in consideration of the public comments regarding this issue, § 3282.11(d), prohibiting a State from charging a fee for any services provided under these regulations, has been removed from the rule. A new paragraph (d) has been added to § 3282.307, which permits the States to assess an additional reasonable inspection fee to offset expenses incurred by the States in conducting inspections. The approval of such fees would be part of the already existing approval process by the Secretary for the State Plans. The States are already required to provide fee and operating cost information to the Secretary pursuant to the State Plan requirements in § 3282.302(b) (11) and (12). The system would be similar to the Department's fee provisions for exclusive State IPIAs in § 3282.352. (IPIAs refer to Production Inspection Primary Inspection Agencies.) The basis that the Secretary will use to review the proposed fee or increase to the fee is found in the language of § 3282.307(d), which permits a reasonable fee by the State in an amount not exceeding the difference between the amount of funds distributed to the State as provided in § 3282.307(b) and the amount necessary to cover the costs of inspections.

To clarify the regulations, a change was made to consolidate several regulatory sections dealing with fees spread throughout the regulations. Sections 3282.454(a) and 3282.454(c) are now redesignated as §§ 3282.307(e) and 3282.307(f). Paragraph § 3282.454(b) was eliminated because it served only as a reference to § 3282.307 and was considered unnecessary.

3. Modification of Cooperative Agreements

The Department has issued new cooperative agreements with the States which modify certain provisions delineated in the earlier agreements. The modifications include an increase in the funds distributed to the States from $12.00 to $16.50 per home sited within each State. This change was effective upon execution of these new agreements with the States in October 1990. Any funds accrued to that time will eventually be used to cover the cost of the program and will delay the need for increasing the label fee assessed manufacturers. If retroactive payments were made, as suggested by the commenter from the State of Oregon, a new fee increase would be necessary a year sooner than expected. Further, there is no administrative procedure for distributing the sort of refund requested by Oregon. For these reasons, Oregon's suggestions were not adopted.

The modifications to the cooperative agreement also provide a basis for evaluating the performance of the States and permit the Department to undertake specified actions in the event that States do not comply with the terms of the agreement. The Department has, therefore, added the phrase, "in accordance with an agreement between the Secretary and the States", in 24 CFR 3282.307(b).

Other Matters

Environmental Review

In accordance with 24 CFR 50.20(1), the subject matter of this rule is categorically excluded from the requirement of an environmental finding under the National Environmental Policy Act. The subject matter is limited to the manner in which inspection fees will be distributed, and does not involve a developmental decision affecting the physical condition of specific project areas or building sites.

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a

substantial number of small entities. This is a procedural change that will not generate any significant cost on the entities affected. This rule only will affect the 35 SAAs participating in the Federal manufactured home construction and safety standards enforcement program. Furthermore, the rule is expected to result in increased revenues for each of the SAAs.

Regulatory Agenda

This rule was listed as sequence number 1418 in the Department's semiannual agenda of regulations published on October 21, 1991 (56 FR 53380, 53411), under Executive Order 12291 and the Regulatory Flexibility Act.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to revising the method by which funds are distributed to State Administrative Agencies voluntarily participating in the Federal manufactured home construction and safety standards enforcement program. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 3828

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured home, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 3282 is amended as follows:

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

1. The authority citation for part 3282 continues to read as follows:

Authority: Section 625, National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5424); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 3282.11 [Amended].

2. In § 3282.11, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d).

3. In § 3282.307, paragraph (b) is revised, and new paragraphs (c), (d), (e) and (f) are added, to read as follows:

§ 3282.307 Monitoring inspection fee—establishment and distribution.

* * * * *

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary or to the Secretary's Agent, who shall distribute a portion of the fees collected from all manufactured home manufacturers among the approved and conditionally-approved States in accordance with an agreement between the Secretary and the States and based upon the following formula:

(1) $9.00 of the monitoring inspection fee collected for each transportable section of each new manufactured housing unit that, after leaving the manufacturing plant, is first located on the premises of a dealer, distributor, or purchaser in that State; plus

(2) $2.50 of the monitoring inspection fee collected for each transportable section of each new manufactured housing unit produced in a manufacturing plant in that State.

(c) A portion of the monitoring inspection fee collected also shall be distributed by the Secretary or the Secretary's Agent based on the extent of participation of the State in the Joint Team Monitoring Program set out in § 3282.308.

(d) To assure that a State devotes adequate funds to carry out its State Plan, a State may impose an additional reasonable inspection fee to offset expenses incurred by that State in conducting inspections. Such fee shall not exceed that amount which is the difference between the amount of funds distributed to the State as provided in paragraph (b) of this section and the amount necessary to cover the costs of inspections. Such fee shall be part of the State Plan pursuant to § 3282.302(b) (11) and (12) and shall be subject to the approval of the Secretary pursuant to § 3282.305.

(e) The Secretary may establish by notice in the **Federal Register** a monitoring inspection fee which is to be paid by manufacturers for each transportable section of each manufactured housing unit manufactured in nonapproved and conditionally approved States as described in § 3282.210. To determine the amount of the inspection fee to be paid for each transportable section of each manufactured home, the Secretary shall divide the (estimated) number of transportable sections of manufactured homes (based on recent industry production figures) into the anticipated aggregate cost of conducting the inspection program in the foreseeable feature. The time period selected for projecting the Department's inspection-related costs and number of transportable sections need not always be the same, but must be for a period of sufficient duration to provide for access to reasonable underlying data. To determine the aggregate cost of conducting the inspection program, the Secretary shall calculate the sum necessary to support:

(1) Inspection-related activities of State Administrative Agencies;

(2) Inspection-related activities performed by the Department of Housing and Urban Development;

(3) Inspection-related activities performed by monitoring inspection contractors;

(4) Miscellaneous activities involving the performance of inspection-related activities by the Department, including on-site inspections on an ad hoc basis; and

(5) Maintenance of adequate funds to offset short-term fluctuations in costs that do not warrant revising the fee under the authority of this section.

(f) The Secretary may at any time revise the amount of the fees established under paragraph (a) or (e) of this section by placing a notice of the amount of the revised fee in the **Federal Register**.

§ 3282.454 [Removed].

4. § 3282.454 is removed.

Dated: December 6, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-29894 Filed 12-13-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8377]

RIN 1545-AP42

Disclosures of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document removes temporary regulations and provides final regulations relating to the disclosure of additional items of return information to the Bureau of the Census for use in certain statistical programs. These regulations provide guidance to Internal Revenue Service personnel responsible for disclosing the information.

EFFECTIVE DATE: These regulations are effective Dec. 16, 1991.

FOR FURTHER INFORMATION CONTACT: Paul W. Winkler, (202) 566-4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adopts with changes the proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6103(j)(1) of the Internal Revenue Code of 1986 that were published in the **Federal Register** on March 5, 1991 (56 FR 9182).

Before adopting the final regulations, the Internal Revenue Service solicited comments and requests for a public hearing on the proposed regulations. No requests for a public hearing were received. The only comments received were from the Bureau of the Census. The Bureau of the Census requested that (a) The code indicator for Form 8814 be added to § 301.6103(j)(1)-1T(b)(1)(xiii); be the physical location of businesses be added in § 301.6103(j)(1)-1T(b)(2)(i); (c) the business address on the Schedule C be added in § 301.6103(j)(1)-1T(b)(3)(xxi); (d) the reference in § 301.6103(j)(1)-1T(b)(2)(iii)(C) to the master file tax account number be changed to the master file tax account code (MFT); and (e) the total of IRA distributions be deleted from § 301.6103(j)(1)-1T(b)(1)(ix). All of these changes are included in the final regulations.

These regulations supersede the temporary regulations (T.D. 8336) issued § 301.6103(j)(1)-1T that were published in the **Federal Register** on March 5, 1991 (56 FR 9189).

Periodically, the disclosure regulations are amended to reflect the changing statistical needs to the Bureau of the Census for tax information, and these final regulations are an update of those regulations.

Explanation of Provisions

In preparation for the 1992 Economic and Agricultural Censuses, the original request by the Bureau of the Census for additional items of return information indicated several areas in which changes to existing Bureau access to tax return information either would improve present statistical programs or were necessary to implement new programs.

For these programs, the Bureau requested the following additional information from the forms and returns filed by individuals and businesses:

(a) The total asset figures from corporate and partnership returns;

(b) The answers to the material participation questions and the agricultural activity code on the Form 1040, Schedule F;

(c) The business description;

(d) Identities of all shareholders of Subchapter S corporations;

(e) Identities of all members of a partnership;

(f) Information from the Form 1120 identifying officers or corporations;

(g) Stock and equity interests of shareholders and partners; and

(h) Certain special income figures shown on the returns.

In addition, the Bureau requested that the final regulations require officers or employees of the Service to disclose the following information from the forms and returns filed by individuals and businesses:

(a) The Form 8814 code indicator,

(b) The physical location of a trade or business,

(c) The business address on Schedule C.

Also, the Bureau requested that the reference in the temporary and proposed regulations to the master file tax account number be changed to the master file tax account code (MFT), and the total of IRA distributions be dropped from the list of return information disclosed to the Bureau of the Census for the purpose of conducting and preparing intercensal estimates of population and income.

All of these requests by the Bureau of the Census are reflected in the final regulations.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul W. Winkler of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements Statistics, Taxes.

Adoption of Amendments to the Regulations

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by removing the citation for § 301.6103(j)(1)-1T and continues to read in part as follows:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * * Section 301.6103(j)(1)-1 also issued under 26 U.S.C. 6103(j) * * *

§ 301.6103 (j)-1T [Removed]

Par. 2. Section 301.6103(j)-T is removed.

Par. 3. Section 301.6103(j)(1)-1, paragraphs, (b)(1) through (b)(3) are revised to read as follows:

§ 301.6103(j)(1)-1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.*—(1) Officers or employees of the Service will disclose the following return information reflected on returns of an individual taxpayer to officers and employees of the Bureau of the Census

for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, intercensal estimates of population and income for all geographic areas included in the population estimates program and demographic statistics programs, censuses, and related program evaluation—

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identity information of spouse and dependents, if reported;

(ii) District office and service center codes;

(iii) Marital status;

(iv) Number and classification of reported exemptions;

(v) Wage and salary income;

(vi) Dividend income;

(vii) Interest income;

(viii) Gross rent and royalty income;

(ix) Total of—

(A) Wages, salaries, tips, etc.,

(B) Interest income,

(C) Dividend income,

(D) Alimony received,

(E) Business income,

(F) Pensions and annuities,

(G) Income from rents, royalties, partnerships, estates, trusts, etc.,

(H) Farm income,

(I) Unemployment compensation, and

(J) Total Social Security benefits.

(x) Adjusted gross income;

(xi) Type of tax return filed;

(xii) Entity code;

(xiii) Code indicators for Form 1040, Form 8814, Schedules A, C, D, E, F, and SE;

(xiv) Posting cycle date relative to filing; and

(xv) Social Security benefits.

(2) Officers or employees of the Service will disclose to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses and related program evaluation—

(i) From the business master files of the Service, the taxpayer name directory and entity records consisting of taxpayer identity information (as defined in section 6103(b)(6)) with respect to taxpayers engaged in a trade or business, the principal industrial activity code, the filing requirement code, the employment code, the physical location, the service center and district and area office codes, and monthly corrections of, and additions to, such entity records;

(ii) From Form SS–4, all return information reflected on such return;

(iii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer,

(B) Total compensation reported,

(C) Master file tax account code (MFT),

(D) Taxable period covered by such return,

(E) Employer code,

(F) Document locator number,

(G) Record code,

(H) Total number of individuals employed in the taxable period covered by the return,

(I) Total taxable wages paid for purposes of Chapter 21, and

(J) Total taxable tip income reported for purposes of chapter 21; and

(iv) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(3) Officers or employees of the Service will disclose the following business related return information reflected on the return of a taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural statistics programs, censuses, and surveys. The "return of a taxpayer" includes, but is not limited to, Form 941; Form 990 series; Form 1040 series and Schedules C, F, and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns, schedules and forms that the Service may issue—

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Code) including shareholder, partner, and employer identity information;

(ii) Gross income, profits, or receipts;

(iii) Net farm profits;

(iv) Sales of livestock and produce raised;

(v) Returns and allowances;

(vi) Cost of labor, salaries, and wages;

(vii) Total assets;

(viii) Royalty income;

(ix) Interest income, including portfolio interest;

(x) Rental income, including gross rents;

(xi) Tax-exempt interest income;

(xii) Percentage of stock owned by each shareholder;

(xiii) Percentage of capital ownership of each partner;

(xiv) Agricultural activity code;

(xv) Answers to material participation questions;

(xvi) End-of-year code;

(xvii) Months actively operated;

(xviii) Principal industrial activity code, including the business description;

(xix) All information on Schedule E filed with Form 1120 series;

(xx) Total number of documents and the total amount reported on the Form 1096 transmitting Forms 1099–MISC;

(xxi) Form 941 indicator and business address on Schedule C; and

(xxii) Consolidated return indicator.

* * * * *

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: November 21, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–29785 Filed 12–13–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Hampton Roads, Regulation 91–05–12]

Safety Zone Regulations; Alligator River, Albemarle Sound, NC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is extending the effective period for the temporary safety zone of one nautical mile around the downed aircraft in the vicinity of the mouth of the Alligator River, in Albemarle Sound. The original safety zone established by Regulation 91–05–11 was in effect from 6:38 p.m. on November 27, 1991 to December 4, 1991. This rulemaking extends the effective date to December 19, 1991. This extension is necessary in order for the U.S. Air Force to continue salvage operations in the area.

EFFECTIVE DATE: This regulation is effective from 12:01 a.m. on December 5, 1991 and shall terminate on or about December 19, 1991, unless sooner

terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: Lt. J.S. Dunphy, Project Officer, USCG Marine Safety Office Hampton Roads, telephone number (804) 441–3294.

Drafting Information

The drafters of this regulation are Lt. J.S. Dunphy, project officer for the Captain of the Port, Hampton Roads, and Lt. M.L. Lombardi, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring the regulation is the downing of an Air National Guard F–16 aircraft in the vicinity of the mouth of the Alligator River in Albemarle Sound, in the approximate position of 35–59.3 degrees North and 076–01.1 degrees West. The aircraft contains hazardous material. The safety zone consists of a circle, with a radius of one nautical mile, the center of which is the position of the downed aircraft. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160–5.

2. A new temporary § 165.T0512 is added to read as follows:

§ 165.T0512 Safety Zone: Albemarle Sound, North Carolina.

(a) *Location:* The following area is a safety zone: The area extending for one nautical mile around the downed aircraft in the vicinity of the mouth of the Alligator River in Albemarle Sound in the approximate position of 35–59.3 degrees North and 076–01.1 degrees West.

(b) *Effective date:* This regulation is effective at 12:01 a.m. on December 5, 1991. It terminates on or about December 19, 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain on the Port, Hampton Roads, Virginia, or his designated representative. The general requirements of § 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or this designated representative. The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia, to act on his behalf. The following officers have been designated by the Captain of the Port: the senior Coast Guard boarding officer on the vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Hampton Roads, VA. The senior boarding officer on the vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16. The Captain of the Port, Hampton Roads, and the Duty Officer at the Marine Safety Office, Hampton Roads, Virginia can be contacted at telephone number (804) 441–3307.

(3) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

Dated: December 5, 1991.

M.F. Pettingill,

Commander, U.S. Coast Guard Alternate Captain of the Port, Hampton Roads.

[FR Doc. 91–29961 Filed 12–13–91; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 165

[COTP TAMPA Regulation 91–121]

Safety Zone Regulations; Old Sunshine Skyway Bridge, Tampa Bay, FL

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone 1000 feet on all sides of the Old Sunshine Skyway Bridge. A safety zone is needed to protect personnel involved in the demolition and removal of the Old Sunshine Skyway Bridge, vessels, facilities, and the environment against injury, destruction, or loss while demolition and removal operations are ongoing. This is an exclusion zone and no traffic is authorized except for Coast Guard, Coast Guard Auxiliary, Florida Marine Patrol, and Contractor vessels.

EFFECTIVE DATES: This regulation becomes effective on Thursday, November 6, 1991, 6 a.m. Eastern Standard Time (e.s.t.). It terminates on Thursday, December 31, 1992, 6 a.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Lieutenant S.P. Metruck, U.S. Coast Guard Marine Safety Office, Tampa, FL, at (813) 228–2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to prevent injury to personnel, damage to the vessels, the facilities and the environment.

Drafting Information

The drafters of this regulation are Lieutenant S.P. Metruck, project officer for the Captain of the Port and Lieutenant J.M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The demolition and removal operation requiring this regulation began on Thursday, November 6, 1991, 6 a.m. e.s.t. This regulation is necessary to prevent hazard to vessels during the demolition and removal of the old Sunshine Skyway Bridge. The Florida Department of Transportation contracted with Hardaway Construction for the demolition and removal of the concrete piers of the old Sunshine Skyway Bridge beginning in November 1991. It is necessary to prohibit vessel traffic from approaching within 1000 feet of the piers to be demolished by blasting. The safety zone will be in effect from Thursday, November 6, 1991, 6 a.m. Eastern Standard Time (e.s.t.) to Thursday, December 31, 1992, 6 a.m. e.s.t. Specifically, the portion of Tampa Bay closed to vessel traffic is the area extending 1000 yards in all directions from the Old Sunshine Skyway Bridge piers being blasted. The safety zone will

be marked by red buoys and contractor vessels will be patrolling the perimeter of the safety zone. In addition, the following audible signals will be given: A five (5) minute warning signal will be sounded prior to the commencement of blasting and consists of a series of one (1) minute long siren or horn signals; the blast signal will be sounded one (1) minute prior to blasting and consists of a series of short siren or horn signals.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T07121 is added to read as follows:

§ 165.T07121 Safety Zone: Old Sunshine Skyway Bridge, Tampa Bay, Florida.

(a) *Location:* The following area is a safety zone: 1000 yards on both sides of the Old Sunshine Skyway Bridge in Tampa Bay, Florida.

(b) *Effective Date:* This regulation becomes effective on Thursday, November 6, 1991, 6 a.m. Eastern Standard Time (e.s.t.). It terminates on Thursday, December 31, 1992, 6 a.m. e.s.t.

(c) *Regulations:* In accordance with the general regulations of § 165.23 of this part, this is an exclusion zone and no traffic is authorized except for Coast Guard, Coast Guard Auxiliary, Florida Marine Patrol, and authorized contractor vessels.

Dated: November 22, 1991.

M.J. Schiro,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 91–29960 Filed 12–13–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

36 CFR Part 327

Shoreline Management Fees at Civil Works Projects; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule correction.

SUMMARY: This is to correct an error made when this Final Rule appeared in the **Federal Register**, on 2 December 1991, 56 FR 61163, FR Doc. 91–28772.

EFFECTIVE DATE: December 2, 1991.

ADDRESSES: HQUSACE, CECW–ON, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis (202) 272–0247.

SUPPLEMENTARY INFORMATION: The purpose and effect of this correction is to clarify a misspelled/misused word on page 61163 in the third column, § 327.31, Shoreline management fee schedule. The word "removal" at the end of the 5th line in this section should read "renewal".

Kenneth L. Denton,

Army Liaison Officer With the Federal Register.

[FR Doc. 91–29922 Filed 12–13–91; 8:45 am]

BILLING CODE 3710–08–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 91–4A]

Registration of Claims to Copyright; Corrections and Technical Amendments

AGENCY: Library of Congress, Copyright Office.

ACTION: Final rule; corrections and technical amendments.

SUMMARY: This final rule is issued to correct errors in paragraph designations in a housekeeping amendment document published in the **Federal Register** on November 26, 1991 at page 59884. The Copyright Office is also making technical amendments necessitated by the redesignation of § 202.3(b)(5) to § 202.3(b)(6) in the final regulations for Group Registration of Serials published on December 7, 1990, in the **Federal Register** at page 50556.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Office is correcting errors in a housekeeping amendment document published in the **Federal Register** on November 26, 1991 at page 59884 which generally updated the references in the regulations to fees for copyright services. Paragraph designations in this document inadvertently failed to take account of the redesignation of § 202.3(b)(5) to § 202.3(b)(6) in the final regulations for Group Registration of Serials published on December 7, 1990 in the **Federal Register** at page 50556.

The Copyright Office is also making further technical amendments necessitated by the redesignation of § 202.3(b)(5) to § 202.3(b)(6) in the final regulations for Group Registration of Serials.

List of Subjects in 37 CFR Part 202

Claims, Copyright.

PART 202—[CORRECTED]

A. The Copyright Office is correcting two designation errors in the amendatory language for § 202.3 concerning fees which appeared in the **Federal Register** on November 26, 1991 at page 59884.

§ 202.3 [Amended]

On page 59885 in amendatory instruction No. 2 for § 202.3, the paragraph designation (b)(5)(ii)(C) is incorrect. It should read (b)(6)(ii)(C). The paragraph designation (C)(2) is incorrect. It should read (c)(2) introductory text.

B. In consideration of the foregoing, part 202 of 37 CFR chapter II, would be amended in the manner set forth below.

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.3 and 202.20 are also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

Section 202.3 is amended as follows:

2. In paragraph (b)(3)(ii) remove "(b)(5)" and add in its place "(b)(6)".

3. In paragraph (b)(6)(ii) remove "§ 202.3(b)(5)" and add in its place "§ 202.3(b)(6)."

4. In paragraph (b)(6)(ii)(C) remove "(b)(5)(i)(E)" and add in its place "(b)(6)(i)(E)".

5. In footnote 6 to paragraph (c)(2) remove "(b)(5)" and "(b)(5)(i)(E)" and add in their place "(b)(6)" and "(b)(6)(i)(E)" respectively.

§ 202.20 [Amended]

6. In § 202.20(c)(2)(xvii) remove "202.3(b)(5)" and add in its place "202.3(b)(6)."

Dated: December 10, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91-29892 Filed 12-13-91; 8:45 am]

BILLING CODE 1410-07-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[Gen. Docket No. 90-54, DA 91-1511]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service; Use of the Frequencies in the 2.1 and 2.5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This *Erratum* corrects errors made in the Second Report and Order in Gen. Docket No. 90-54, FCC 91-302 (released Oct. 25, 1991), 56 FR 57808, November 14, 1991, FR Doc. 91-26668.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: The complete text of this *Erratum* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Erratum

1. The erratum revises portions of §§ 21.902 and 74.931 Commission's Rules, as set forth in the Second Report and Order in Gen. Docket No. 90-54.

Parts 21 and 74 of title 47 of the U.S. Code of Federal Regulations are amended to read as follows:

2. The Authority Citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 313, 314, 403, 602; 47 U.S.C. 552.

3. Section 21.902 is amended by revising paragraph (i)(1) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(i)(1) For each application for stations in the 2596-2644 MHz, 2650-2656 MHz, 2662-2668 MHz, and 2674-2680 MHz frequency bands filed on or after December 30, 1991, the applicant must submit an analysis demonstrating that operation of the applicant's transmitter will not cause harmful interference to any existing, cochannel and adjacent-channel D-channel, E-channel, F-channel, or G-channel Instructional Television Fixed Service (ITFS) station, licensed or with a construction permit authorized, with a transmitter site within 50 miles of the coordinates of the Multichannel Multipoint Distribution Service (MMDS) or MDS H-channel station's proposed transmitter site.

* * * * *

4. The Authority Citation for part 74 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply sections 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

5. Section 74.931 is amended by revising paragraphs (h), (i) and (j), and by adding paragraph (k), to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(h) Except as specified in paragraphs (i) and (j) of this section, no licensee of a station in this service may lease transmission time or capacity to any cable television company either directly or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable television company, if the ITFS main transmitter station is within 20 miles of the cable television company's franchise area or service area, and if the cable television company is the sole provider of cable television service in the franchise area.

(i)(1) A cable television company shall be exempt from the provisions of paragraph (h) of this section if its franchise area contains none of the following:

(i) Any incorporated place of 2,500 inhabitants or more, or any part thereof;

(ii) Any unincorporated place of 2,500 inhabitants or more, or any part thereof; or

(iii) Any other territory, incorporated or unincorporated, included in an urbanized area.

(2) All population statistics and definitions used in qualifying for this exemption shall be the most recent available from the U.S. Department of Commerce, Bureau of the Census. In no event shall any statistics resulting from censuses prior to 1980 be used. The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and rural part.

(3) If the cable operator's franchise area includes a rural part of an extended city, but includes no other territory described in this paragraph, an exemption shall apply.

(j) The provisions of paragraph (h) of this section will not apply to ITFS excess capacity leased directly or indirectly to cable operators or affiliates to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator or affiliate will be permitted to lease ITFS excess capacity equivalent to one MDS channel within 20 miles of the cable television franchise area or service area for this purpose, and, within 20 miles of the cable television franchise area or service area, no more ITFS excess capacity than the equivalent of one MDS channel may be used by a cable television company or affiliate pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Mass Media Bureau a cover letter explicitly identifying its lessee as a local cable operator or affiliate and stating that the lease was executed to facilitate the provision of local programming. The first lease notification for an MDS or ITFS channel in an area filed with the Commission will be entitled to the exemption. The limitations on the equivalent of one MDS channel per party and per area include any cable/ITFS operations grandfathered pursuant to paragraph (k) of this section or any cable/MDS operations grandfathered pursuant to § 21.912(f) of this chapter. Local programming service pursuant to a

lease must be provided within one year of the date of the lease or one year of the grant of the licensee's application for the leased channel(s), whichever is later.

(k) Lease arrangements between cable and ITFS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will not be subject to the prohibitions of paragraph (h) of this section. Leases between cable television entities and ITFS entities executed on February 8, 1990, or thereafter, are invalid.

List of Subjects

47 CFR Part 21

Communications common carriers, Domestic public fixed radio services.

47 CFR Part 74

Television broadcasting, experimental, auxiliary, and special broadcast and other program distributional services.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91-29981 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 65

[Common Carrier Docket No. 89-624; FCC 91-389]

Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: The Commission has adopted an Order on Reconsideration denying requests to reconsider its authorized rate of return determination prescribed in Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Order, 5 FCC Rcd 7507 (1990), 55 FR 51423, December 14, 1990. The Order on Reconsideration also clarified the relationship between the authorized rate of return and price cap regulation by stating that the authorized rate of return will not be considered in determining whether overall earnings under price cap regulation are lawful.

EFFECTIVE DATE: The authorized rate of return took effect January 1, 1991. It continues in effect until replaced or superseded.

FOR FURTHER INFORMATION CONTACT: Sonja J. Rifken, Telephone (202) 632-7500.

SUPPLEMENTARY INFORMATION:

Background

Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Rcd 7507 (1990), 55 FR 51423 (1990).

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T and Local Exchange Carriers, CC Docket No. 87-463, and Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Rcd 197 (1989), 55 FR 4820 (1990).

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T and Local Exchange Carriers, CC Docket No. 87-463, and Represcribing the Authorized Rate of Return for Local Exchange Carriers, CC Docket No. 89-624, 55 FR 10788 (1990).

Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 2637 (1991), 56 FR 21612 (1991).

Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), 56 FR 42375 (1990).

Summary of Order on Reconsideration

This is a summary of the Commission's Order on Reconsideration in Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, FCC No. 91-389, adopted November 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st, NW., Washington, DC 20037.

On September 19, 1990, this Commission prescribed an authorized rate of return on investment for local exchange carrier (LEC) interstate access of 11.25%. Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Order, 5 FCC Rcd 7507 (1990) (hereinafter the 1990 Represcription Order). On January 16, 1991, five parties filed petitions for reconsideration of the 1990 Represcription Order: The Bell Atlantic Telephone Companies, The Southern New England Telephone Company, Southwestern Bell Telephone Company, the United States Telephone Association, and U S West Communications. Four petitioners seek reconsideration of the authorized rate of return, claiming it is too low. U S West seeks clarification of the relationship between the rate of return and the lawfulness of earnings under price cap regulation.

In the 1990 Represcription Order, we prescribed an authorized, overall rate of return on investment for LEC interstate access services of 11.25%. We determined that a reasonable range of cost of equity estimates for interstate access was 12.5%-13.5%. We also determined that the cost of debate was 8.8%. Using the composite cost of debt and capital structure of the Regional Bell Holding Companies (RHCs), we found the capital structure to be 44.2% debt and 55.8% equity. Based on our cost of equity, cost of debt, and capital structure findings, we calculated a range of reasonable estimates of the interstate access cost of capital of 10.85%-11.4%. Out of concern for infrastructure development, we prescribed a return in the upper part of this range: 11.25%.

In reaching these results, we used the RHCs as surrogates for interstate access service. We accorded the most weight to a series of monthly discounted cash flow (DCF) estimates. These DCF estimates were adjusted upward for the possibility that the growth estimate used in our DCF formula might somewhat understate investor expectations about the RHCs' cellular properties during the January-July period, and thus understate RHC costs of equity. We also found that the RHC cost of equity was probably higher than the cost of equity for interstate access service due to the participation of RHCs in riskier nonregulated activities, and accordingly, made a downward adjustment to the cost of equity estimates. Although parties submitted a variety of other cost of equity estimates based on a variety of other surrogates and methodologies, we found them unpersuasive. On reconsideration, carriers challenge a number of the determinations we made in reaching these conclusions.

In the 1990 Represcription Order, we rejected parties' requests to adjust DCF calculations for flotation costs generally, and stated that no carrier specifically demonstrated a need to recover actual flotation costs. On reconsideration, we again reject this position, and accordingly, will not adjust for flotation costs.

In the 1990 Represcription Order, we found unpersuasive arguments favoring the use of a quarterly compounded dividend in the DCF. On reconsideration, we again find these arguments unpersuasive.

In the 1990 Represcription Order, Bell Atlantic argued that the RHCs were

inappropriate surrogates for interstate access service because RHC diversification created a "portfolio effect." The "portfolio effect" theorizes that, by including assets whose returns are less than perfectly correlated in investment portfolios, investors reduce the variability in their overall portfolio return. We continue to find it highly unlikely that diversification into foreign, and nonregulated, competitive operations could lower the business risk for an RHC as a whole below the business risk of its relatively low-risk regulated telephone business.

Some parties in the 1990 Represcription Order argued that any use of RHC data in a DCF formula would be inappropriate because of the "cellular phenomenon." They posited that the "cellular phenomenon" would cause any DCF calculation performed using RHC data to significantly understate the cost of capital for the RHC because the RHC growth rates then available did not adequately account for investor expectations about the RHCs' cellular properties. We found that the cellular phenomenon does not require us to discard the DCF formula, but merely to adjust the formula inputs to remove the effects of cellular. No party provides persuasive arguments on reconsideration which dissuade us of this view. Also, no party has shown why we must further adjust upward our DCF estimates.

On reconsideration, we find that the adjustment that we made to the growth component in our DCF formula was entirely consistent with the efficient market hypothesis, the DCF's underlying premise. Making an adjustment to the growth component of the DCF formula in no way denies the principle that all relevant information is incorporated into the price of the stock.

In the 1990 Represcription Order, we stated: "(M)arket-to-book ratios greater than one have been viewed traditionally as possible indicators that the company's return is greater than its required return. The high market-to-book ratios that the RHCs enjoy today are probably related to their nonregulated activities and tell us little about the required return on interstate access services." 1990 Represcription Order, 5 FCC Rcd at 7520. We believe that our statement about market-to-book ratios does not undercut our reliance on the RHCs as surrogates for interstate access. In the 1990 Represcription Order, we acknowledged that the RHCs were more diverse today than they were in 1986, but found that they remained adequate surrogates for interstate access. Our observation that some of the stock value reflected in RHC market-to-book ratios was "probably related" to diversified activities is entirely consistent with that determination.

After careful examination of SWB's study which allegedly demonstrates that the DCF produces unreasonable results, we conclude that the study proves nothing about whether the DCF method produces reliable and reasonable results.

On reconsideration, we continue to find SWB's price appreciation and price/earnings projections for its multi-stage DCF formula improbable.

We find fault with SWB's submission of alternative applications of the risk premium method to produce cost of equity estimates because the academic studies used to determine the relationship of interest rates and risk premiums do not support its hypothesis.

In the 1990 Represcription Order, we examined and rejected the CAPM studies submitted. SWB takes issue with the Commission's criticism of the Value Line betas used in the CAPM studies. We addressed and rejected SWB's argument about Value Line betas in the 1990 Represcription Order proceeding. We also reject contentions that the Value Line adjustment of beta produces "forward-looking" betas.

In the 1990 Represcription Order, USTA used a cluster analysis to select a group of comparable firms for producing costs of equity for interstate access. On reconsideration, we continue to find the USTA study insufficient.

We reaffirm our conclusion that a 44.2% debt/55.8% equity capital structure is well within the limits traditionally considered acceptable for regulated telephone operations, and is therefore, reasonable for purposes of calculating and industry-wide allowed rate of return for interstate access services. We also affirm our view that a large portion of debt issued to Employee Stock Ownership Plans (ESOP) is rightly attributable to regulated operations because BOC employees make up about 90% of the RHC workforce.

We reject U S West's contention that we should exclude certain of its debt obligations simply because the reporting of those obligations was affected by an accounting change, FASB 94.

We reject again the parties' contentions that the relationship between interest rates and cost of equity requires us to prescribe a rate of return at or above the previously prescribed 12%.

We acknowledge that interest rates are the most readily observable evidence of the cost of capital. They indicate with precision the current cost of debt. Determining the cost of equity on the basis of interest rates, however, requires the determination of a risk premium. Unfortunately, risk premiums are not directly observable; the size of the risk premium applicable to any particular company's equity at any point in time is generally as controversial as any other method of estimating cost of equity. The undeniably correct observation that the risk premium inherent in the 1990 prescription is smaller than the risk premium inherent in the 1986 prescription is not, as the LECs contend, proof that the 1990 prescription is unreasonably low.

The arguments regarding competition and infrastructure issues were analyzed and discussed in considerable detail in the 1990 Represcription Order; we have been provided with no reason to alter our conclusions with respect to these issues.

U S West requests this Commission to state that the authorized rate of return has no role in determining whether overall earnings under price cap regulation are lawful. U S West is correct that the authorized rate of return will not be considered in determining whether overall earnings under price cap regulation are lawful.

We find petitioners present no persuasive evidence that would lead us to reconsider our authorized rate of return determination, and deny the petitions for reconsideration on this issue. We grant U S West's petition to the extent it seeks clarification of the rate of return/price cap regulation relationship, and clarify that the authorized rate of return may not be used to prove the unreasonableness of a price cap carrier's overall earnings.

Accordingly, *It is ordered,* pursuant to sections 1, 4(i), 4(j) 201–205, and 405 of the Communications Act of 1934, as amended 47 U.S.C. 151, 154(i), 154(j), 201–205, and 405, That the Petitions for Reconsideration seeking reconsideration of the authorized rate of return of the Bell Atlantic Companies, Southern New England Telephone Company, Southwestern Bell Telephone Company, United States Telephone Association, and U S West Communications, are denied.

It is further ordered, That the Petition for Reconsideration of U S West Communications seeking clarification on the relationship between the authorized rate of return and price cap regulation is granted.

List of Subjects in 47 CFR Part 65

Communications common carriers, rate of return.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-29691 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-257; RM-7779]

Radio Broadcasting Services; Venice, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 221C3 for Channel 221A at Venice, Florida, and modifies the license for Station WCTQ(FM) to specify operation on the higher class channel, at the request of Asterisk Radio, Inc. See 56 FR 46145, September 10, 1991. Channel 221C3 can be allotted to Venice in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) north, in order to avoid a short spacing to Station WYFO, Channel 220C3, Lakeland, Florida. The coordinates are North Latitude 27-10-55 and West Longitude 82-28-40. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-257, adopted November 26, 1991, and released December 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 221A and adding Channel 221C3 at Venice.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29871 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-254; RM-7463]

Radio Broadcasting Services; Hayden, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 233C for Channel 233A at Hayden, Idaho, and modifies the construction permit for Station KKCH(FM) to specify operation on the higher powered channel, at the request of North Idaho Broadcasting Company. See 56 FR 46142, September 10, 1991. Channel 233C can be allotted to Hayden in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit for Station KKCH. The coordinates for this allotment are North Latitude 47-43-54 and West Longitude 116-43-48. Concurrence of the Canadian government has been obtained, since Hayden is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-254, adopted December 3, 1991, and released December 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 233A and adding Channel 233C at Hayden.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29982 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-123; RM-7032]

Radio Broadcasting Services; De Ridder, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Central Broadcasting Company, Inc., licensee of Station KROK(FM), Channel 221A, De Ridder, Louisiana, substitutes Channel 221C3 for Channel 221A at De Ridder, Louisiana, and modifies KROK(FM)'s license to specify operation on the higher powdered channel. See 55 FR 10259, March 20, 1990. Channel 221C3 can be allotted to De Ridder in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.6 kilometers (9.1 miles) southwest to accommodate West Central's desired site. The coordinates for Channel 221C3 are 80-46-30 and 93-25-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-123, adopted December 3, 1991, and released December 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 221A and adding Channel 221C3 at De Ridder.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29983 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-41; RM-7227, RM-7725]

Radio Broadcasting Services; Ridgeland and Lady's Island, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mattox-Guest of South Carolina, Inc., substitutes Channel 285C3 for Channel 285A at Ridgeland, South Carolina, and modifies the license of Station WSHG to specify operation on the higher class channel. Channel 285C3 can be allotted to Ridgeland in compliance with the Commission's minimum distance separation requirements at Station WSHG's presently licensed transmitter site, at coordinates North Latitude 32-26-10 and West Longitude 80-55-23. The proposal of Mattox-Guest to substitute Channel 285C3 for Channel 285A and reallot the channel from Ridgeland to Lady's Island, South Carolina, is dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-41, adopted December 3, 1991, and released December 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC, 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 285A and adding Channel 285C3 at Ridgeland.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29984 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-41]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PW118A, PW123, PW124B, PW125B, and PW126A turboprop engines. This AD would require rework of the existing 2-intercompressor case (ICC) and replacement of the low pressure rotor speed (NL) sensor port sealing tube and external air-tube connecting the P2.5/P3 switching-valve to the rear inlet case. This proposal is prompted by reports of internal oil fires in the ICC. This condition, if not corrected, could result in fire in the engine nacelle cavity, inflight shutdown, and aircraft damage.

DATES: Comments must be received no later than January 15, 1992.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-41, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to Room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec, Canada J4G 1A1. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, (617) 272-5047.

SUPPLEMENTARY INFORMATION: Insterested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-41". The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been 13 ICC fires on PW100 series turboprop engines. Four of these ICC fires migrated into the engine nacelle cavity and activated the engine fire warning system, requiring flight crew action to extinguish the fire. In each instance, the ICC had a 2-hole internal air passage design that was introduced by PWC SB 20237. The original ICC featured a 19-hole internal air passage design. This 2-hole design reduces scavenging ability and allows oil to accumulate in the P2.5 air cavity. The accumulated oil may ignite, resulting in an ICC fire.

The FAA has determined that ICC fire events may cause the NL sensor port sealing tube and the external air-tube connecting the P2.5/P3 switching-valve to the rear inlet case to lose mechanical integrity. This condition will allow the fire to migrate into the engine nacelle cavity.

The proposed rule would require rework of the existing 2-hole air passage ICC to a 19-hole design to reduce the risk of an ICC fire. The proposed rule would also require replacement of the current sealing tube and external air tube with designs that would increase their durability under the high temperature conditions associated with an ICC fire event.

The FAA has reviewed PWC SB 20914, Revision 2, dated June 3, 1991, which describes the replacement of the NL sensor port sealing tube and external air-tube connecting the P2.5/P3 switching-valve to the rear inlet case. The FAA has also reviewed PWC SB 20957, Revision 2, dated June 10, 1991, which describes the rework of the existing ICC.

Since this condition is likely to exist or develop on the other engines of this same type design, an AD is proposed that would require rework of the existing 2-hole design, and replacement of the NL sensor port sealing tube and external air-tube connecting the P2.5/P3 switching-valve to the rear inlet case, in accordance with the service bulletins previously described.

There are approximately 683 PW100 series turboprop engines of the affected design in the worldwide fleet. It is estimated that approximately 85 engines on U.S.-registered aircraft would be affected by this AD. It is estimated that it would take approximately 8 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. The FAA had been advised that the manufacturer will supply the required parts as part of a parts warranty program. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney Canada: (Docket No. 91-ANE-41).

Applicability: Pratt & Whitney Canada (PWC) PW118A, PW123, PW124B, PW125B, and PW126A series turboprop engines installed on, but not limited to Embraer EMB-120, DeHavilland Dash 8 Series 300, Aerospatiale ATR 72, Fokker 50, and British Aerospace ATP aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent an intercompressor case (ICC) fire, fire in the engine nacelle cavity, inflight shutdown, and aircraft damage, accomplish the following:

(a) Replace the low pressure rotor speed (NL) sensor port sealing tube and the external air-tube connecting the P2.5/P3 switching-valve to the rear inlet case in accordance with the Accomplishment Instructions of PWC SB 20914, Revision 2, dated June 3, 1991, at the next engine shop visit, or by March 31, 1992, whichever occurs first.

(b) Rework the existing 2-hole air passage ICC to a 19-hole design in accordance with the Accomplishment Instructions of PWC SB 20957, Revision 2, dated June 10, 1991, at the next engine shop visit or by June 30, 1994, whichever occurs first.

(c) For the purpose of this AD, engine shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), and alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer can obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on November 20, 1991.

Michael Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-29915 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-239-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD), that is applicable to certain McDonnell Douglas Model DC-9-80 series and Model MD-88 airplanes. This proposal would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by the proposed AD are intended to prevent loss of brake effectiveness during a high energy RTO, which may cause further incidents/accidents.

DATES: Comments must be received by February 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-239-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Directorate, 3229 East Spring Street, Long Beach, California 90806-2324; telephone (213) 988-5338; fax (213) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-239-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No.

91-NM-239-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analyses were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits was established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use,

(2) schedule dynamometer testing to validate wear limits as necessary, and

(3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

McDonnell Douglas Corporation has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on Model DC-9-80 series and Model MD-88 airplanes. The FAA also witnessed some of the dynamometer tests, which were conducted in October 1990. Based on this data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals for Model DC-9-80 series and Model MD-88 airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for Model DC-9-80 and Model MD-88 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Series airplane and Douglas brake part No.	Maximum wear limit (inches)
DC-9-81/82/87 and MD-88:	
2608892-1	1.2
5004321-3/-4/-5, all Trapezoid	0.4
5004321-6, Bullnose	0.5
5004321-6, Trapezoid	0.4
5004321-10, Bullnose	0.4
5004321-11, Trapezoid (Standard)	0.5
5004321-11, Trapezoid (Rebalanced)	0.6
5004321-12, Trapezoid	0.4
5007898, Trapezoid	0.6
5007898-1, Trapezoid	0.6
DC-9-83:	
2608892-1	0.5
5007898, Bullnose	0.4
5007898-1, Trapezoid	0.4

After examining the circumstances and reviewing all available information related to the incident described above, the FAA has determined that AD action should be taken to prevent loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

Since the unsafe condition described is likely to exist on other airplanes of this same type design, the proposed AD would require (1) inspection of certain Model DC-9-80 and Model MD-88 landing gear brakes for wear, and replacement if the new wear limits are not met, and (2) incorporation of specified maximum wear limits for certain Model DC-9-80 and Model MD-88 breaks into the FAA-approved maintenance inspection program.

The maximum wear limits for Model DC-9 series airplanes and C-9 (Military) airplanes were originally proposed in Docket Number 91-NM-78-AD (56 FR 21108, May 7, 1991), which included wear limits for the Model DC-9-80 series and the MD-88 airplanes. Since issuance of that NPRM, the FAA has determined that, based on new data received from the manufacturer, the brake wear limits for the Model DC-9-80 series and the MD-88 airplanes differ significantly from the brake wear limits for the Model DC-9 series airplanes and C-9 (Military) airplanes. Therefore, separate rulemaking action is taken in this proposal to address the brake wear limits for the Model DC-9-80 series and the MD-88 airplanes.

There are approximately 870 Model DC-9-80 series and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 503 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $12,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,142,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 91-NM-239-AD.

Applicability: Model DC-9-80 series and MD-88 airplanes, equipped with brake part numbers identified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this Ad, inspect the brake having brakes part numbers specified, below, for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

Series airplane and Douglas brake part No.	Maximum wear limit (inches)
DC-9-81/82/87 and MD-88:	
2608892-1	1.2
5004321-3/-4/-5, all Trapezoid	0.4
5004321-6, Bullnose	0.5
5004321-6, Trapezoid	0.4
5004321-10, Bullnose	0.4
5004321-11, Trapezoid (Standard)	0.5
5004321-11, Trapeziod (Rebalanced)	0.6
5004321-12, Trapeziod	0.4
5007898, Trapeziod	0.6
5007898-1, Trapeziod	0.6
DC-9-83:	
2608892-1,	0.5
5007898, Bullnose	0.4
5007898-1, Trapezoid	0.4

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD, into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA Transport Airplane Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 3, 1991.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-29908 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AWP-17]

Proposed Establishment of Transition Area; Mesquite, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700 foot transition area at Mesquite, NV. This transition area would provide controlled airspace for aircraft executing instrument approach procedures to the Mesquite Airport, Mesquite, NV.

DATES: Comments must be received on or before January 17, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 91-AWP-17, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot transition area at Mesquite Airport, NV. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to the Mesquite Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97449, January 12, 1983); 14 CFR 11.69.

2. § 71.181 is amended as follows:

Mesquite Airport, NV [New]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Mesquite Airport (lat. 36°50'06"N., long. 114°03'16"W.), and within 1.8 miles either side of the Mormon Mesa VORTAC 246° radial extending from the Mesquite Airport to 10 miles southwest of the Mesquite Airport.

Issued in Los Angeles, California, on December 2, 1991.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 91-29912 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 382

[Docket No. 47649; Notice No. 91-22]

RIN 2105-AB86

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition from the Regional Airline Association, the Department is proposing to amend its rule on aircraft accessibility to require the availability of on-board wheelchairs in only those aircraft that have more than 70 passenger seats—instead of those aircraft that have more than 60 passenger seats as is currently required.

DATES: Comments should be received by January 30, 1992. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 47649, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202 366-9306 (voice); 202 755-7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1990, the Department published in the **Federal Register** a final rule to implement the Air Carrier Access Act of 1986 (55 FR 8008). One part of that rule concerning aircraft accessibility requires, among other things, that new aircraft with more than 60 passenger seats have an accessible lavatory, whether or not required to have such a lavatory, be equipped with an operable on-board wheelchair (§ 382.21(a)(4)(ii)). In addition, the rule requires that new aircraft with more than 60 passenger seats having an inaccessible lavatory have available upon prior request an operable on-board wheelchair for use by a qualified handicapped individual who is able use but is unable to reach the lavatory (§ 382.21(a)(4)(ii)). The rule also requires that air carriers comply with the provisions of paragraph (a)(4) for all aircraft with more than 60 passenger seats within two years of the effective date of the rule (§ 382.21(b)(2)).

On July 19, 1991, the Regional Airline Association (RAA) petitioned the Department to amend its rule on aircraft accessibility to require the availability of on-board wheelchairs in all new aircraft and all existing aircraft as of April 5, 1992, with inaccessible lavatories that have more than 70—instead of the currently required 60—passenger seats. In order to implement the requested change, RAA suggested that the Department revise §§ 382.21(a)(4)(ii) and (b)(2) to apply only to aircraft with more than 70 seats. The Department, in the belief that this petition may have merit, is proposing to make the requested changes. The RAA's petition was published with this notice for the information of commenters.

Petition of the Regional Airline Association

Summary of Petition

Pursuant to the rulemaking procedures of 49 CFR Part 5, the Regional Airline Association, on behalf of its 76 member airlines, hereby petitions for an amendment to 14 CFR Sections 382.21(a)(4)(ii) and 382.21(b)(2). The purpose of this petition is to amend the rules so that the use and carriage of on-board wheelchairs is required only on those passenger aircraft with more than 70 passenger seats. Compliance with the current rule, which would require the carriage and use of on-board wheelchairs on commuter aircraft with more than 60 seats by April 5, 1992, is impractical and unsafe.

The Rule

Section 382.21(b)(2) reads as follows:

Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this Section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR Part 121.

Section 382.21(a)(4)(ii) reads as follows:

The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with the advance notice as provided in § 382.33(b)(8) of a qualified handicapped individual who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

The combination of the two sections referenced above creates a requirement that on-board wheelchairs be available for use on all passenger aircraft with more than 60 seats by April 5, 1992.

The Use of On-Board Wheelchairs is Not Practical or Safe on Aircraft With Fewer Than 70 Seats.

In its original comments to the Notice of Proposed Rulemaking on part 382, RAA expressed its concern about the safety and practicality of using on-board wheelchairs on small aircraft. To a large extent, DOT recognized those concerns when it limited the requirement for the use of on-board chairs to those aircraft with more than 60 seats.

Although the 60-seat cut-off eliminates the overwhelming number of commuter aircraft from this requirement, it fails to recognize a small number of aircraft in the commuter fleet which are slightly larger than 60 seats, yet the nearly identical to models currently operated by the same carriers in the same markets. Since two types of regional airline aircraft are now flying with more than 60 seats, but with the same interior physical limitations as aircraft with 60 or fewer seats, RAA requests that § 382.21 be amended to increase the cutoff for wheelchair usage from 60 to 70 seats or, in the alternative, to grant an exemption from this requirement for the two aircraft identified below. This rule change or exemption would allow a small number of aircraft to be excluded from the requirement of § 382.21.

The preamble to the DOT Final Rule stated that "RAA's concerns about the use of on-board chairs in small aircraft are moot, since the rule will require on-board chairs only in aircraft with accessible lavatories, which small commuter aircraft typically do not have." (55 FR 8034; March 6, 1990). The preamble goes on to state, "In the multiple aisle environment of widebody aircraft in which accessible lavatories, and hence on-board chairs, are required, flight attendant crews are larger than in other aircraft and conflicts with other flight attendant functions (e.g., meal and beverage service) are less likely to occur." Clearly, DOT did not envision that the narrow aisle, short haul commuter type aircraft would be subject to the on-board chair requirement, yet the Final Rule requires that chairs would be provided on two aircraft used by commuter operators. In addition to the meal and beverage service mentioned by DOT, RAA believes that the primary responsibilities of the flight attendants, passenger assistance in emergencies and firefighting, could be impeded by allowing on-board wheelchairs on commuter size aircraft.

The specific regional airline aircraft impacted by the rule are the Aerospatiale/Aeritalia ATR-72 and the British Aerospace Advanced Turboprop (ATP). The ATR-72 is currently in service with AMR Eagle in San Juan, Chicago and Nashville and with Trans States Airlines (Trans World Express) in St. Louis. As can be seen from the attached graphic, the ATR-72 has the same fuselage cross section as the 50-seat ATR-42.[1] Problems associated with use of wheelchairs on the ATR-72 are identical to those involved in using wheelchairs on the ATR-42. Thus, the same practical difficulties with the use of an on-board wheelchair are evident in the ATR-72 as in the ATR-42. The 64-seat British Aerospace ATP is currently in service with Air Wisconsin, operating as United Express, based in Appleton, Wisconsin. Attached is a graphic showing the cabin layout on the BAe ATP, demonstrating the same type of physical limitations to wheelchair use as on the ATR-72.[2]

The ATR-72 and the BAe-ATP are designed for and flown in the traditional commuter airline mode, *i.e.*, short haul trips connecting a hub airport to small and medium-sized communities. Although they are larger than other commuter aircraft, they are identical to those smaller aircraft in other respects. They have the same turboprop engines which permit the economical short-haul operations. Flights in these aircraft will rarely exceed two hours, thereby mitigating the need for an on-board wheelchair, and making their use less practical for an already very busy cabin crew.

In the AMR Eagle system, the ATR-72 and the ATR-42 will be used interchangeably. They are designed to be used by the same crews and in the same commuter markets. They will be used to supplement existing service to handle peak hour and seasonal demand, and will routinely be used in alternating service patterns. Therefore, a passenger flying between two cities might go on an ATR-72 in one direction and an ATR-42 in the other, depending on the time of the flight. In the case of American Eagle, the ATR-72 aircraft will only amount to a small percentage of the carrier's fleet. It would be costly and unrealistic for these carriers to be required to use on-board wheelchairs on these aircraft when that same requirement would not apply to the majority of aircraft operated by these carriers. It would also be confusing for passengers and crews. It is not possible to carry on-board wheelchairs on the ATR-42 without significantly modifying the aircraft interiors, even if the carrier elected to do so.

Using current projections, there will be a total of 9 ATR-72s and 10 ATPs in service by the end of 1991. If these requirements were applied to the ATR-72 and ATP, all cabin crewmembers would have to be trained to operate the wheelchairs since those crewmembers could routinely be assigned to those aircraft. Since these flights would only represent a small percentage of the overall operations of the affected carriers, it would result in a significant cost for the carriers, without commensurate benefit to the traveling public. Each carrier would have to develop reservations, notification, training, and maintenance requirements for only a handful of aircraft. The number of passengers that could take advantage of the wheelchair service would likewise be small. Considering the acknowledged difficulty in the use of on-board wheelchairs on aircraft of this size, it would be in the public interest to exclude these aircraft from the on-board wheelchair requirement.

Conclusion

Accordingly, the Regional Airline Association requests that 14 CFR 382.21 be amended to require the carriage and use of on-board wheelchairs only on aircraft with more than 70 passenger seats. In the alternative, RAA requests that the ATR-72 aircraft and the BAe-ATP aircraft be exempted from the requirements of § 382.21 to carry on-board wheelchairs.

Date: July 18, 1991.

Respectfully submitted,

John S. Fredericksen,

President; Regional Airline Association.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It would not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979. A full regulatory evaluation is not required because the overall economic impact of the proposal would be minimal. There would be little, if any, increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this proposal would not have a significant economic impact on a substantial number of small entities. As stated above, this proposed rule would have minimal economic impact.

Executive Order 12612 (Federalism)

In accordance with Executive Order 12612, I have determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 5th day of December, 1991, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend title 49 of the Code of Federal Regulations, part 382:

PART 382—[AMENDED]

1. The authority citation for Part 382 would continue to read as follows:

Authority: Sections 404(a), 404(c), and 411 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374(a), 1374(c), and 1381).

2. Section 382.21 would be amended by revising paragraphs (a)(4)(ii) and (b)(2) to read as follows:

§ 382.21 Aircraft accessibility.

(a) * * *

* * * * *

(4)(i) * * *

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 70 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified handicapped individual who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat

[1] Cabin Layout Diagrams and Measurement Information are available for inspection at the Department of Transportation, Office of the General Counsel, 400 7th St. SW., Room 10424, Washington, DC 20590.

[2] See footnote 1.

without the use of an on-board wheelchair.

* * * * *

(b)(1) * * *

(2) Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 70 passenger seats operated under 14 CFR part 121.

* * * * *

[FR Doc. 91-29788 Filed 12-13-91; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 911299-1299]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations (15 CFR parts 730 through 799) to determine whether they should be modified, rescinded or extended. To help BXA make this determination, BXA is seeking comments on how existing foreign policy-based export controls maintained under the Export Administration Regulations, have affected exporters and the general public.

Although the EAA expired on September 30, 1990, the President, invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

DATES: Comments must be received by December 30, 1991 to assure full consideration in the formulation of export control policies.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Regulations Branch (Room 1622), Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4830.

SUPPLEMENTARY INFORMATION: The current foreign policy control maintained by the BXA are set forth in the Export Administration Regulations (EAR), parts 776, 778, and 785. These controls apply to: Crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents and associated equipment and technical data related to the production of chemical and biological agents (§ 778.8); embargoed countries (§ 785.1); South Africa (§ 785.4(a)); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7).

On January 18, 1991, the Secretary of Commerce extended for one year all foreign policy controls then in effect. Since the date of that report certain foreign policy controls on South Africa have been terminated. Also, because of the Secretary of State did not include the new Republic of Yemen on the list of countries designated as supporters of international terrorism (55 FR 37793, September 13, 1990), certain foreign policy controls on the southern region of Yemen, formerly known as the People's Republic of Yemen, have expired. On March 13, 1991, two elements of the President's Enhanced Proliferation Control Initiative (EPCI) were made effective, one expanding controls on chemical weapon precursors (56 FR 10756) and the other imposing controls on equipment and technical data related to the production of chemical and biological weapons (56 FR 10760). The third element followed on August 15, 1991 (56 FR 40494), imposing various controls on certain exports that could be destined for missile or chemical or biological weapons-related use. On August 29, 1991 (56 FR 42824), in conjunction with publication of the new Commerce Control List, foreign policy controls were adjusted and, in limited cases, expanded on Iran and Syria, as well as on equipment and technology controlled for missile technology purposes.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria which the Departments of Commerce and State consider in determining whether to continue to revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the proposed controls with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the proposed controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential

information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 377-5653.

Authority: Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.*); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990); and E.O. 12769 of July 10, 1991 (56 FR 31855, July 12, 1991).

Dated: December 10, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-29849 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 62

National Natural Landmarks Program: Notice of Public Hearings

AGENCY: National Park Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: Public hearings on the proposed rulemaking of the National Park Service regarding the National Natural Landmarks Program (56 FR 58790, November 21, 1991) will be held at the nine locations below at the dates and times indicated. These hearings are open to the public. Interested persons may present oral and/or written comments on the proposed rulemaking at the hearings.

DATES AND ADDRESSES: Public hearings will be held as follows:

Davis, California: Cabernet Room in the Silo, Hutchison Drive, University of California Campus, Davis, CA 95616, Thursday, January 23, 1992, 7-10 p.m.

Denver, Colorado: Waterloo Room, Regency Hotel, 3900 Elati, Denver CO 80216, Wednesday, January 22, 1992, 7-10 p.m.

Tallahassee, Florida: Hearing Room, Marjorie Stoneman Douglas Building, Florida Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, FL 32399, Thursday, January 16, 1992, 7-10 p.m.

Boise, Idaho: Boise Interagency Fire Center, Training Center Auditorium, 3905 Vista Ave., Boise, ID 83705, Tuesday, January 21, 1992, 7-10 p.m.

Porter, Indiana: Porter Community Center, 500 Ackerman Drive, Porter, IN 46304, Wednesday, January 15, 1992, 7-10 p.m.

Bangor, Maine: Bangor Civic Center, Bass Park, 100 Dutton St., Bangor, ME 04401, Wednesday, January 15, 1992, 7-10 p.m.

Albuquerque, New Mexico: Albuquerque Convention Center, Cochiti Room, 401 2nd St., NW., Albuquerque, NM 87102, Wednesday, January 22, 1992, 7-10 p.m.

Harrisburg, Pennsylvania: Heritage Room A, 333 Market St., Harrisburg, PA 17101, Thursday, January 16, 1992, 6:30-9:30 p.m.

Washington, District of Columbia: Auditorium, Department of Commerce Building, 14th St. and Constitution Ave. NW., Washington, DC, Monday, January 13, 1992, 7-10 p.m.

FOR FURTHER INFORMATION CONTACT: Anne Frondorf, Wildlife and Vegetation Division, National Park Service, Washington, DC 20013-7127. Telephone: (202) 343-8129.

SUPPLEMENTARY INFORMATION: In response to concerns expressed about the operation of the National Natural Landmarks (NNL) Program, the National Park Service has proposed revision of the Program regulations (36 CFR part 62). Proposed changes include strengthening and clarifying procedures for owner notification, adding a requirement for voluntary owner consent for natural landmark designation, and providing for review of natural landmark nominations by the National Park System Advisory Board. The intended effect of these actions is to ensure that owners of sites under consideration for possible national natural landmark designation are fully notified in advance of such consideration and have the opportunity to comment on these proposals; that the National Park System Advisory Board will review all future national natural landmark nominations and provide recommendations to the Secretary as to their qualifications for designation; and that sites are not designated by the Secretary unless all owners involved have indicated their consent to such designation.

Written comments on the proposed rule will be accepted until February 19, 1992, and should be directed to: Director, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

Copies of the proposed rulemaking are available from the National Park Service (see under "**FOR FURTHER INFORMATION CONTACT**," above).

Dated: December 2, 1991.

Michael A. Ruggiero,

Acting Associate Director, Natural Resources.

[FR Doc. 91-29898 Filed 12-13-91; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 51, 52, and 60

[FRL-4083-4]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period for proposed WEPCO rulemaking.

SUMMARY: On June 14, 1991 (56 FR 27630), EPA proposed regulation clarifying the new source review (NSR) requirements of Title I of the Clean Air Act as they pertain to electric utility steam generating units. The proposed rulemaking also clarifies the Agency's policy regarding utility pollution control projects and implements changes made by Congress in the 1990 Clean Air Act Amendments regarding clean coal technology and repowering projects.

In the last few weeks, EPA received requests to extend the comment period for an additional amount of time. At this time, and in response to those requests, EPA is extending the comment period until December 17, 1991.

DATES: Written comments on the proposed rulemaking must be received by December 17, 1991.

ADDRESSES: Submit comments on the proposed rule (in duplicate, if possible) to: EPA Air Docket (LE–131), Environmental Protection Agency, ATTN: Docket A–90–06, 401 M Street, SW., Washington, DC 20460.

DOCKET: Supporting information used in developing the proposed rule is contained in Docket A–90–06. This Docket is available for inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Wm. Larry Elmore, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711 (919) 541–5433.

Dated: December 10, 1991.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 91–29954 Filed 12–13–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MA–8–1–5264; A–1–FRL–4083–2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT Determination for Norton Company in Worcester

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at Norton Company's facility in Worcester, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the state in accordance with the commitments made in its 1982 Ozone Attainment Plan approved by EPA on November 8, 1983 (48 FR 51480). This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before January 15, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the state submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On May 23, 1991, the Massachusetts Department of Environmental Protection (DEP) submitted a final plan approval issued to Norton Company (Norton) located in Worcester, Massachusetts as a formal SIP revision. The plan approval establishes and requires reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Norton. The SIP revision consists of a plan approval effective May 15, 1991, and an amendment to the plan approval effective May 20, 1991.

Background

The DEP issued this plan approval pursuant to requirements found in 310 CMR 7.18(17), which EPA approved on November 9, 1983 (48 FR 51480) as part of Massachusetts' Ozone Attainment Plan. Massachusetts' regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," requires the DEP to determine and impose RACT on otherwise unregulated stationary sources of VOC with the potential to emit greater than or equal to 100 tons per year (TPY). On May 25, 1988, EPA issued a SIP call to Massachusetts stating that its ozone attainment plan was substantially inadequate to attain the ozone standard. Nevertheless, Massachusetts remains obligated to continue to control these otherwise unregulated sources of VOC and submit the RACT determinations as SIP revisions.

On June 16, 1988, EPA sent a letter to Massachusetts identifying deficiencies in the existing VOC regulations. One deficiency EPA listed involved the definition of VOC. EPA stated that the definition needed to be revised to make it consistent with EPA policy. Accordingly, Massachusetts changed its definition to include all compounds of carbon which participate in atmospheric photochemical reactions or can be measured by the applicable test method under 40 CFR part 60 excluding the compounds which were listed in the Federal Register as exempt.

The old Massachusetts VOC definition contained a vapor pressure cutoff. This cutoff exempted Norton Company from RACT since its potential VOC emissions under the old definition were less than 100 TPY. Norton Company's largest source of emissions is from p-dichlorobenzene (PDB). Most of the PDB in the facility is being replaced with a non-VOC pore inducing agent.

Norton manufactures grinding wheels and refractory products. No control techniques guideline (CTG) document exists for grinding wheels or refractory products at this time. Therefore, Norton is a miscellaneous VOC-emitting source covered by 310 CMR 7.18(17). The plan approval imposing RACT on Norton contains provisions which will ensure enforceable emission reductions at the facility.

RACT Determination

Norton has taken considerable efforts to minimize its VOC emissions. Norton now utilizes non-VOC pore inducing agents, better housekeeping practices and lower VOC emitting coatings. Norton had VOC emissions in 1987 of 373 TPY, including 299 TPY from PDB. The DEP has calculated an 87% reduction in plantwide VOC emissions with full implementation of the RACT plan. The May 15, 1991 plan approval incorporates enforceable emission limits and recordkeeping procedures for four plants; (1) Plant #2: Large Vitrified Products, (2) Plant #6: Refractory, (3) Plant #7: Small Vitrified Products, and (4) Plant #8: Organic Products. For a

more detailed description of the requirements of the plan approval see the State submittal and the Technical Support Document which are available at the EPA Regional Office listed in the **ADDRESSES** section.

Plant #2—Large Vitrified Products

Norton produces large grinding wheels in Plant #2. PDB is used in this plant as a pore inducing agent in the wheels. All of the PDB is emitted in the drying oven. In 1987, 262 tons of VOC were emitted from PDB use. RACT for this plant is the substitution of most of the PDB utilized with non-VOC pore inducing agents. Ethylene glycol, used as a wetting agent, is also limited in its use. PDB use is limited to product categories listed in proviso 1 of section III of the May 15, 1991 final approval. These formulations may not contain more than 30% by weight of PDB or any other VOC at any time. All other product categories not explicitly mentioned in proviso 1 or section III cannot contain more than 8% by weight of ethylene glycol at any time. Furthermore, the state has capped VOC emissions in Plant #2 at 14 TPY VOC over every consecutive 12 month period. Through substitution, there is a 94.6% reduction in VOC emissions for Plant #2.

Plant #6—Refractory

This plant produces refractory ceramic components for industry. PDB is used in this plant as pore inducing agent in refractory products. The main product in this plant is a refractory brick. The VOC emissions for 1987 were calculated to be 25 TPY. RACT for this plant is the substitution of most of the PDB formulations to non-VOC formulations. PDB is only allowed in the Punky Plaser Group and cannot exceed 27% by weight of PDB or any other VOC. All other product categories shall contain no VOC. Furthermore, the state limited the source to 0.5 TPY VOC over every consecutive 12 month period. Through substitution there is a 98% reduction in VOC emissions from Plant #6.

Plant #7—Small Vitrified Products

This plant's operations are similar to the processes in Plant #2, however, the products are smaller and less PDB is used. The VOC emissions for 1987 from PDB use were calculated to be 12 TPY. RACT for this process is the substitution of most of the PDB formulations with non-VOC formulations. PDB can only be used in those classifications listed in proviso 3 of section III of the plan approval. All other product categories not listed shall contain no VOC. Furthermore, the state has capped emissions at 5 TPY VOC over every consecutive 12 month period for PDB use in plant #7.

Additional areas of VOC emissions in Plant #7 include wheel back cementing, hole cementing and painting operations. Average emissions were calculated to be 3.6, 4.2 and 0.5 TPY of VOC, respectively. RACT for the wheel back cementing operations is defined as the use of a cement not exceeding 13.2 pounds of VOC per gallon of solids applied and is to be met at all times. The state has also capped emissions for the wheel back cementing operations at 3.6 TPY VOC over every consecutive 12 month period. RACT for hole cementing is the use of a cement not exceeding 12.8 pounds of VOC per gallon of solids applied and is to be met at all times. The state has capped these emissions at 4.2 TPY VOC over every consecutive 12 month period. RACT for the painting operations is the use of coatings containing no more than 3.5 pounds of VOC per gallon of coating (minus water) as applied, for all coatings.

Through substitution of products and coatings, this plant has achieved a 58% reduction in VOC emissions.

Plant #8—Organic Products

VOCs are used in this process within the mix and in the manufacturing process. In 1987, an estimated 17.3 TPY of VOC were emitted in the ovens from the organic products. Furthermore, painting emissions in 1987 accounted for 8.4 TPY of VOC, lubricating emissions accounted for 29 TPY of VOC and miscellaneous VOCs accounted for 11.2 TPY. RACT has been defined as 0.086 pounds per hour of VOC emitted per oven for the organic products. Additionally, Norton shall not emit over 68.8 pounds of VOC per 24 hour period from all the ovens. The state has capped emissions for organic products at 10 TPY of VOC over every consecutive 12 month period.

RACT for the painting operations is defined as 3.5 pounds of VOC per gallon of coating (minus water) as applied which is to be met for all coatings.

RACT for the miscellaneous operations is good housekeeping and minimal VOC solvent use for cleaning operations.

Through product substitution and reformation, Plant #8 has achieved a 25% reduction in VOC emissions.

Proposed Action

EPA's review of this material indicates that Massachusetts' final RACT approval for Norton Company dated May 15, 1991 and amended on May 20, 1991 will result in improved air quality. EPA is proposing to approve the Massachusetts SIP revision for Norton Company in Worcester, which was submitted on May 23, 1991.

A May 3, 1990 letter from Norton Company to the Massachusetts DEP, Central Region, lists emissions from the "Lubrication" process in Plant #8 to be 29.14 TPY. The May 15, 1991 plan approval does not address these emissions. Furthermore, it is unclear whether this May 15, 1991 plan approval and May 20, 1991 amendment to the plan approval apply to all VOC emitting processes at Norton. On August 2, 1991, Norton was issued a Notice of Noncompliance from the DEP. Item 6 on page 4 of that notice states that additional VOC emission points were not included in the RACT plan. Therefore, the DEP should issue an additional plan approval to include and define RACT for any additional VOC emission points and/or processes. The DEP should address the VOC emissions in Plant #8 from the "Lubrication" process when an additional plan approval is issued.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve the plan approval dated May 15, 1991 and final plan approval correction dated May 20, 1991 submitted as a SIP revision request for Norton. The plan approval defines and imposes RACT on various processes at Norton, a manufacturer of grinding wheels and refractory bricks.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and

environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 6, 1991.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 91–29956 Filed 12–13–91; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 90–043]

RIN 2115–AD52

Federal Pilotage Requirement for Foreign Trade Vessels in Certain Designated Waters Within the States of Oregon and Washington

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: In a notice of proposed rulemaking published in the **Federal Register** on February 19, 1991 (56 FR 6598), the Coast Guard proposed a federal pilotage requirement for foreign trade vessels in certain designated waters within the States of Oregon and Washington. The State of Oregon recently enacted legislation establishing mandatory pilotage for foreign trade vessels on the Columbia River and other navigable waters within Oregon. Because the navigable channel of the Columbia River flows intermittently through the State of Oregon and the State of Washington, both states share jurisdiction over the waterway. However, both states have agreed that the State of Oregon will regulate pilotage requirements along the Columbia river. Thus, Oregon's action to require foreign trade vessels transiting the Columbia River to take a state pilot should ensure that these vessels will use a state pilot on the Columbia River regardless of whether the vessels traverse Washington or Oregon. Therefore, the notice proposing a federal pilotage requirement in certain designated waters within the States of Oregon and Washington is withdrawn as unnecessary.

DATES: This proposed rule is withdrawn as of December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Merchant Vessel Personnel Division (G–MVP/12), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0217.

Dated: December 4, 1991.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–29823 Filed 12–13–91; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–351, RM–7864]

Radio Broadcasting Services; Detroit Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert D. Spilman proposing the allotment of Channel 272C2 to Detroit Lake, Minnesota, as that community's second FM broadcast service. The coordinates for Channel 272C2 are 46–48–54 and 95–50–48. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before January 30, 1992, and reply comments on or before February 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–351, adopted November 26, 1991, and released December 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29872 Filed 12–13–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–352, RM–7866]

Radio Broadcasting Services; Ava, Branson and Mountain Grove, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Turtle Broadcasting Co. of Branson requesting the substitution of Channel 292C2 for Channel 292C3, Branson, Missouri, and modification of the construction permit for Station KRZK(FM) to specify operation on the higher class channel. The coordinates for Channel 292C2 are 36–43–00 and 93–05–00. To accommodate the allotment at Branson, we shall propose the substitution of Channel 223A for Channel 293A, Station KCMG–FM, Mountain Grove, Missouri at coordinates 37–08–07 and 92–14–59 and the substitution of Channel 221A for Channel 222A, Station KKOZ–FM, Ava, Missouri at coordinates 36–55–48 and 92–39–19. We shall propose to modify the construction permit for Channel 292C3 in accordance with Section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the

availability of an additional equivalent class channel for use by such petition.

DATES: Comments must be filed on or before January 30, 1992, and reply comments on or before February 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 4203, Wilmington, North Carolina 28406.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–352, adopted November 26, 1991, and released December 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 91–29873 Filed 12–13–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–353, RM–7863]

Radio Broadcasting Services; Altoona, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Alpenglow Communications, Inc., proposing the substitution of Channel 251C3 for Channel 251A at Altoona, Wisconsin, and modification of the construction permit for Station WISM–FM to specify operation on the higher class channel. The coordinates for Channel 251C3 are 44–43–35 and 91–25–06.

DATES: Comments must be filed on or before January 30, 1992, and reply comments on or before February 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Clifford E. Brane, President, Alpenglow Communications, Inc., 5555 Zuni NE., suite 378, Albuquerque, New Mexico 87108.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–353 adopted November 26, 1991, and released December 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29874 Filed 12–13–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review of 53 Foreign Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service announces the 90-day finding that a petition to add 53 species of foreign birds to the List of Endangered and Threatened Wildlife has presented substantial information indicating that the action may be warranted. A status review of these birds is initiated.

DATES: The finding announced herein was made on September 30, 1991. Comments and information may be submitted until March 16, 1992.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2858). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act of 1973, as amended in 1982, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition has presented substantial information indicating that the requested action may be warranted, and that such finding be published promptly in the Federal Register. If the finding is positive, section 4(b)(3) also requires commencement of a review of the status of the involved species. The U.S. Fish and Wildlife Service (Service) now announces a 90-day finding on a recently received petition.

The petition was submitted by the International Council for Bird Preservation (ICBP). It was dated April 30, 1991, and was received by the Service on May 6, 1991. It requests that the 53 species of foreign birds named in the following table be added to the List of Endangered and Threatened Wildlife. It was accompanied by a number of ICBP data sheets and appropriate references to various ICBP publications describing the status of the birds.

TABLE.—BIRDS COVERED BY ICBP PETITION

Common name	Scientific name	Range
Kalinowski's tinamou	*Nothoprocta kalinowskii*	Peru.
Alaotra grebe	*Tachybaptus rufolavatus*	Madagascar
Junin grebe	*Podiceps taczanowskii*	Peru.
Amsterdam albatross	*Diomedia amsterdamensis*	Amsterdam I.
Freira	*Pterodroma madeira*	Madeira I.
Beck's petrel	*Pterodroma becki*	Papua N.G.
Fiji petrel	*Pterodroma macgillivrayi*	Fiji.
Heinroth's shearwater	*Puffinus heinrothi*	Papua N.G.
Greater adjutant	*Leptoptilos dubius*	S.E. Asia.
Giant ibis	*Pseudibis gigantea*	S.E. Asia.
Andean flamingo	*Phoenicoparrus andinus*	South America.
Madagascar pochard	*Aythya innotata*	Madagascar.
Brazilian merganser	*Mergus octosetaceus*	South America.
Southern helmeted curassow	*Pauxi unicornis*	Peru, Bolivia.
Blue-billed curassow	*Crax alberti*	Colombia.
Djibouti francolin	*Francolinus ochropectus*	Dkibouti.
White-breasted guineafowl	*Agelastes meleagrides*	West Africa.
Bogota rail	*Rallus seimplumbeus*	Colombia.
Junin rail	*Laterallus tuerosi*	Peru.
Jerdon's courser	*Cursorius bitorquatus*	India.
Slender-billed curlew	*Numenius tenuirostris*	Eurasis.
Salmon-crested cockatoo	*Cacatua moluccensis*	Indonesia.
Blue-throated macaw	*Ara glaucogularis*	Bolivia.
Bannerman's turaco	*Tauraco bannermani*	Cameroon.
Black-breasted puffleg	*Eriocnemis nigrivestris*	Ecuador
Esmeraldas woodstar	*Acestrura berlepschi*	Ecuador
Yellow-browed toucanet	*Aulacorhynchus huallagae*	Peru.
Helmeted woodpecker	*Dryocopus galeatus*	South America
Royal cinclodes	*Cinclodes aricomae*	Peru.
White-browed tit-spinetail	*Leptasthenura xenothorax*	Peru.
Brown-banded antpitta	*Grallaria milleri*	Colombia.
Stresemann's bristlefront	*Merulaxis stresemanni*	Brazil.
Brasilia tapaculo	*Scytalopus novacapitalis*	Brazil.
Grey-winged cotinga	*Tijuca condita*	Brazil.
Kaempfer's tody-tyrant	*Idioptilon kaempferi*	Brazil.
Ash-breasted tit-tyrant	*Anairetes alpinus*	Peru, Bolivia.
Bananal tyrannulet	*Serpophaga araguayae*	Brazil.
Peruvian plantcutter	*Phytoma raimondii*	Peru.
Gurney's pitta	*Pitta gurneyi*	Burma, Thailand.
Raso lark	*Alauda razae*	Cape Verde I.
Niceforo's wren	*Thryothorus nicefori*	Colombia.
Socorro mockingbird	*Mimodes graysoni*	Mexico.
Thyolo alethe	*Alethe choloensis*	E. Africa.
Taita thrush	*Turdus helleri*	Kenya.
Aldabra warbler	*Nesiallas aldabranus*	Aldabra I.
Banded wattle-eye	*Platysteira laticincta*	Cameroon.
Caerulean paradise-flycatcher	*Eutrichomyias rowleyi*	Indonesia.
Marungu sunbird	*Nectarina prigoginei*	Zaire.
Tumaco seedeater	*Sporophila insulata*	Colombia.
Floreana tree-finch	*Camarhynchus pauper*	Ecuador
Black-backed tanager	*Tangara peruviana*	Brazil.
Clarke's weaver	*Ploceus golandi*	Kenya.
Ibadan malimbe	*Malimbus ibadanensis*	Nigeria.

The Service has examined the petition and supporting data, and finds that substantial information has been presented indicating that the requested listing of all 53 species of birds may be warranted. However, more information is sought for many of these birds, and the Service encourages the submission of appropriate data, opinions, and publications in the course of the status review that now is initiated. In accordance with section 4(b)(3), within 12 months of receipt of the petition, the Service will make another finding as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing measures.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 12, 1991.

Richard N. Smith,

Acting Director.

[FR Doc. 91–29919 Filed 12–13–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on a Petition To List Cagle's Map Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding: 90-Day petition finding for the Cagle's map turtle.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Cagle's map turtle (*Graptemys caglei*) in Texas to the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing of Cagle's map turtle (*Graptemys caglei*) as threatened or endangered may be warranted.

DATES: The finding announced in this notice was made on November 12, 1991. Comments and information should be submitted by January 15, 1992.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi, Texas, 78412. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carol Beardmore, Endangered Species Biologist, at the above address (512/888-3346 or FTS 529-3346).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Dr. Flavius C. Killebrew, Department of Biology and Geosciences, West Texas State University, Canyon, Texas, submitted a petition to the Service to list Cagle's map turtle at least as a threatened species. The petition was dated April 16, 1991, and received by the Service on April 26, 1991.

This turtle is restricted to the Guadalupe-San Antonio river system of Texas (Behler 1979) and is highly aquatic. Cagle's map turtle requires a diverse riverine habitat of riffle and pool areas. Males feed extensively on trichopteran larvae, which are abundant on rocks above gravel bars, whereas females feed mainly on clams, which are abundant in pool areas. The species appears to avoid deeper, silted, or heavily impacted portions of the river system.

The petition states the only healthy population of Cagle's map turtle occurs in the Guadalupe River between Cuero and Sequin, Texas. Populations in other portions of the Guadalupe River display a patchy distribution. The species appears to have disappeared from the San Antonio River, and its status in the Blanco and San Marcos Rivers is unclear. No evidence of the turtle's presence was found in major impoundments in the Guadalupe River system.

The Animal Notice of Review (January 6, 1989) classifies Cagle's map turtle as 3C. However, the petition states that the status is based on the belief that Cagle's map turtle inhabits reservoirs. The petitioner found no evidence of the turtle's existence in major impoundments an believes reports of the turtle in reservoirs (and possibly reports from other locations) may have been Texas river cooter (*Pseudemys texana*), a similar species and largely inseparable visually from a distance. The upcoming Animal Notice of Review will restore Cagle's map turtle to Category 2, taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

This species may be threatened by the construction of five additional dams on the Guadalupe River system. The greatest impact to the species may be from two reservoirs planned for the Guadalupe River near Cuero, Texas. Preliminary results indicate 56 percent of the turtle's habitat will be covered by the reservoirs near Cuero. Cagle's map turtle may also be threatened by over-collecting for the pet trade or scientific collections.

After a review of the petition, and information otherwise available to the Service, the Service has found that the petition presented substantial information that listing Cagle's map turtle (*Graptemys caglei*) as threatened or endangered may be warranted. This finding initiates a status review for Cagle's map turtle as required under section 4(b)(3)(A) of this Act. Within 1 year from the Date the petition was received, the Service is required under section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of Cagle's map turtle.

References Cited

Behler, J.L. 1979. The Audubon Society field guide to North American reptiles and amphibians. Alfred A. Knopf, New York, pp 459-460.

Author

This notice was prepared by Lorena Wada, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. (505/766-2914 or FTS 474-2914).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 5, 1991.

Richard N. Smith,

Acting Director Fish and Wildlife Service.

[FR Doc. 91-29920 Filed 12-13-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 911193-1293]

RIN 0648-AD82

Crustacean Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This amendment will establish a limited entry program for the lobster fishery of the Northwestern Hawaiian Islands (NWHI), with permit eligibility based on historical participation in and dependence on the fishery. A maximum

of 15 permits will be available at any time and permits will be transferable. To further control effort, a maximum of 1100 assembled lobster traps (and up to 100 unassembled replacement traps) may be used by any vessel. To further protect lobster stocks, the amendment would establish an annual closed season (January 1–June 30) and an annual quota based on the condition of stocks. The amendment also proposes additional reporting requirements to ensure adequate data to carry out and monitor the limited entry and conservation measures for the fisheries. The Southwest Regional Director, NMFS, may initiate rulemaking to adjust the number of permits, the length of the closed season, the limit on the number of traps, or reporting requirements, with the concurrence of the Council. The amendment is intended to conserve NWHI lobster stocks and provide the basis for an economically healthy and productive fishery.

DATES: Written comments must be received on or before January 27, 1992.

ADDRESSES: Copies of Amendment 7 and the environmental assessment may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., suite 1405, Honolulu, HI 96813; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry St., Terminal Island, CA 90731. Send comments on the proposed rule and plan amendment to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

Send comments on the proposed collections of information to the Director, Southwest Region, NMFS (see above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523–1368; or Alvin Z. Katekaru, Pacific Areas Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary in 1983 (48 FR 5560, February 7, 1983). The FMP covers fisheries for spiny lobster and slipper lobster in Hawaii, Guam, and American Samoa, but only the fishery in the NWHI is actively managed. This has been the largest and most dynamic lobster fishery in the region, with peak landings of almost 1,100 metric tons (mt) in 1985. Conservation and management measures have included permits and reporting requirements to monitor the fishery, and size limits, area closures, and trap escape vents to conserve the lobster stocks.

Several recent trends in the NWHI lobster fishery are clear. Landings, catch per unit of effort (CPUE), and revenues all declined in 1990 after 2 years of relative stability in the fishery. The volume of lobster landed fell to the lowest level since 1987. In 1990, 356 mt of spiny lobster and 75 mt of slipper lobster were landed, respective decreases from 1989 of 38 percent and 19 percent. Effort in 1990 was about one million trap-hauls, a 10 percent increase over 1989. CPUE for the two species combined was 0.66 legal lobsters per trap (0.50 for legal spiny lobster and 0.16 for legal slipper lobster). This is a 37 percent decrease from 1989 and is the lowest CPUE in the history of the fishery. The average size of spiny lobster tails (4–8 oz for 1990) continued to decrease through the year, causing increasing concern among vessel operators. Fleet revenues for 1990 were $4.9 million, down 22 percent from 1989.

Analyses of commercial fishing logbooks and research sampling data have produced several conclusions. Low recruitment to the fishery was first observed at Maro Reef and the banks northwest of Maro, resulting in a decline in CPUE. Fishing effort then intensified at Necker Island and Gardner Pinnacles, resulting in lobster stocks in those areas being fished down. The 1990 spawning stock biomass of spiny and slipper lobsters in the NWHI was 22 percent of the levels in the late 1970s, prior to the development of the fishery, an indication that the million trap-hauls in 1990 may have been excessive since recruitment to the fishery was low. The FMP defines the threshold for recruitment overfishing at 20 percent of the pre-fishery level. Thus, the status of spawning stock biomass in 1990 was at or near a level that could cause a severe decline in recruitment.

In 1991, lobster fishing continued in the NWHI until the fishery was closed by emergency action on May 8 (56 FR 21961, May 13, 1991). The closure was subsequently extended for a second 90-day period (56 FR 36012, July 30, 1991). Commercial fishing logbooks for the period January–April 1991 indicated that CPUE for the period was 0.63 legal lobster per trap-haul, the lowest ever recorded during those months since 1984 (when such data started being recorded). By comparison, the CPUE for this period in 1990 was 0.84. The correlation between the CPUE for the first 4 months of the year and the CPUE for the entire year is 0.91, meaning that the CPUE from the first 4 months is a good indicator of the CPUE for the entire year.

Although most of the fishing in 1991 was at Necker Island and Gardner Pinnacles, available data from Maro Reef show that Maro has not recovered from the low 1990 CPUE. Based on the early 1991 CPUE and the lack of any improvement in the catch rates at Maro Reef, the Council concluded that the current spawning stock biomass is in danger of recruitment overfishing.

Recent research suggests that the population of spiny lobster may vary annually according to oceanographic conditions. Above average sea surface height in the NWHI is hypothesized to indicate good recruitment of 3-year old lobsters into the fishery 4 years later (1 year of larval stage and 3 years of growth after settlement before reaching legal size), and vice-versa. This model forecasts poor recruitment to the fishery in 1991, and improved recruitment in 1992. Recruitment to the fishery from the 1990 spawning biomass will not be observed until 1993.

In response to this information, the Council requested the emergency closure of the fishery, but this was only a temporary solution to conditions in the fishery. The fishery is still open access. While size limits and gear restrictions are in place, there are no limits on total effort or catch. High ex-vessel prices continue to drive fishermen to exploit a resource that is approaching threatened levels. The Council concluded that a combination of effort and harvest limitations is needed immediately to protect the resource and the industry that depends on it. The FMP amendment and its proposed regulations would take several steps, including a limited access system, a limit on effort, an annual fleet harvest quota, and a closed season.

The Council discussed and considered several factors in developing the proposed limited access system for this fishery. First, the permit eligibility criteria are based on historical and current participation in, and dependence on, the fishery. Initial permits under the system will be issued, with relatively equal weight, to: (1) Owners of vessels that developed the fishery and have stayed with it, and (2) owners of vessels that have entered the fishery relatively recently and help make up the current core of the industry. Regarding fishery economics, the Council determined that a limit of 15 vessels will dampen the boom-and-bust cycle in fishery participation that might result from fluctuations in stock availability, reducing over-capitalization in the

fishery and allowing vessels to operate efficiently. This limit also maintains the competitive nature of the fishery, a feature that the participants requested. The amendment also sets a limit of 1100 assembled traps per vessel that can be used to fish or be carried on board; this will minimize overcapitalization that might otherwise result from increasing the physical capacity of individual vessels. The Council also considered and made allowances in the system for social factors in the fishery. While permits are initially issued to vessel owners based on historical and current dependence on the fishery, the system allows individuals who have ties to the fishery, by either owning, operating, or working as a crew member of a vessel that participated in it, to have the highest priority for permits if they become available in the future.

In addition to limiting access, the Council proposes that a 6-month annual closure of the NWHI fishery be implemented. The objective of the closed season is to protect gravid females during a portion of their period of peak abundance (May-August), as well as protecting the spawning biomass as it grows and matures (January-April) prior to the peak in spawning activity. Because vessels operating under the limited access system for lobster will not be able to fish for lobsters during the closure, the Council modified the qualification criteria for eligibility in its moratorium on new entry into the Hawaii-based pelagic longline fishery. The Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region allows qualified lobster vessels to obtain a longline limited access permit, so that they have an alternative fishery to pursue. In addition, several lobster vessels also hold or are qualified to hold limited access permits under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. Thus, the Council has considered the capacity of the vessels to engage in other fisheries as part of its decision process in this program.

Further, so that the output of the fleet could be fine-tuned to protect the lobster stocks and stabilize the industry that depends on them, the amendment contains a procedure to set an annual fleet harvest quota. The quota can be adjusted each year to account for fluctuation in stock abundance due to fishing pressure or environmental changes. An initial annual quota would be set based on catch and effort data for prior years, and would be revised after the first month of fishing if catch and effort data demonstrate that the stocks are more or less robust than initially estimated. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), will publish a notice indicating the initial quota in the **Federal Register** by February 15 each year.

To ensure adquate data to monitor the fishery and to carry out and evaluate the effectiveness of the limited entry program, several changes are made in monitoring and reporting requirements. Permit applicants must provide the same application information as for other western Pacific permitted fisheries under an established information collection approved by the Office of Management and Budget (OMB). Supplementary information would be required from applicants that are corporations or partnerships. There would be minor changes in currently used reporting forms to record sea conditions during fishing operations and to record lobster tail size. These data are needed to evaluate changes in CPUE and in the stocks of lobster. Periodic reports from vessel operators while at sea will be required to ensure adequate data to set and enforce the annual quota.

Finally, the Regional Director, with the concurrence of the Council, is authorized to initiate rulemaking to adjust the limit on the number of permits that may be in effect at any time, to change the length of the closed season, to adjust the limit on the number of traps that may be used at any time, or to change reporting requirements.

In total, the amendment proposes a comprehensive program of limited access, fleet harvest quota, a closed season, reporting requirements, and a process to adjust management without an FMP amendment to ensure the long-term health of the stocks and of the businesses that depend on them.

If approved, Amendment 7 will be implemented in early 1992. The fishery would then be closed until July 1, 1992, when the first quota would be implemented. Timely notice of the closure will be given to fishermen then on the grounds by the Regional Director to allow a reasonable time to retrieve their gear and exist the fishing grounds.

This proposed rule is not substantively different from the version submitted by the Council with the amendment. Editorial changes have been made to expand the discussion of the background of the action and to clarify the requirements and prohibitions under the proposed rule.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that the amendment is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 7. A copy of the EA is available from the Council (see **ADDRESSES**).

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not not have an effect on the economy of more than $100 million; there will be no major increase in costs or prices for consumers, individual industries, or government agencies; and there will be no significant adverse effect on competition, employment, investment, productivity, or the ability of U.S. industries to compete with foreign enterprises. The Council incorporated a regulatory impact review in its plan amendment, which may be obtained from the Council (see **ADDRESSES**).

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. No vessels currently in the fishery would be displaced, and the costs of compliance, in terms of potential revenues lost, recordkeeping, the competitive position of these businesses relative to larger entities, and the ability of these businesses to remain in the market, are not significant. As a result, a regulatory flexibility analysis was not prepared.

The Council has considered the potential effects of this action on endangered and threatened species and has concluded that no impacts are likely. Informal consultations are being conducted with NMFS under section 7 of the Endangered Species Act and, if warranted, a biological opinion will be prepared by NMFS.

This rule proposes several collection-of-information requirements that are subject to the Paperwork Reduction Act.

Information requested from lobster permit applicants would be standardized as part of an effort by

NMFS to consolidate into one form the different permits for fisheries in the Western Pacific Region. The public reporting burden for this collection of information is estimated to average 15 minutes per application, including the time to review and complete the form, and return it to NMFS. The standardized permit application form was approved by OMB in conjunction with the Southwest Region Family of Permit Forms (OMB Control No. 0648–0204).

In addition, corporations or partnerships filing permit applications would have to complete a supplementary information sheet listing the names of individual owners and their respective ownership shares in the vessel. The reporting burden for this information is estimated to be 30 minutes per application. In addition, a new section for reporting weather conditions in the fishing logbook (currently required and approved under OMB Control No. 0648–0214) is proposed. The estimated burden is 2 minutes per fishing day. A new information element (tail sizes) would be added to the existing processing and sales report requirement (approved under OMB Control No. 0648–0214). The public burden for completing the new section is estimated to be 5 minutes per trip (trips normally last 1.5 to 3 months). Periodic at-sea reports of catch and effort would be required to monitor catches, revise quotas, and close the fishery when the quota is taken. The public burden for these reports is estimated to be 5 minutes per report, including establishing communications and reporting the catch. This may be weekly, daily, or otherwise.

The proposed rule would also require vessel operators to notify NMFS if they are forced to leave traps on the fishing grounds due to an emergency situation. While no such emergencies are predicted, it is estimated that such a report would take less than 5 minutes, assuming no problems with radio transmission and reception from the location of the emergency.

A request for clearance of these additional collections of information has been submitted to OMB. Send comments on the burden estimates or any other aspect of these collections of information, including suggestions on how to reduce the burden, to the Director, Southwest Region, NMFS, and the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii. This determination has been submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 681

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 11, 1991.

David S. Crestin,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 681 is proposed to be amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 681.2 [Amended]

2. In § 681.2, new definitions for "Final quota", "Fleet harvest quota", "Initial quota", "Owner", "Pacific Area Office", and "Receiving vessel" are added, in alphabetical order, to read as follows:

* * * * *

Final quota means the total harvest quota for spiny and slipper lobsters (combined) that may be landed from Permit Area 1. It is derived by adjusting the initial quota based on catch and effort data from the first month of fishing each year and is published after fishing begins in any year.

Fleet harvest quota means the total allowable number of legal spiny and slipper lobsters (combined) that may be landed from Permit Area 1 by permitted vessels in a calendar year.

Initial quota means the initially determined fleet harvest quota for Permit Area 1 calculated from previous years' catch and effort information, and published in February each year.

* * * * *

Owner means the person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the U.S. Coast Guard for a documented vessel or in a registration certificate issued by a State or Territory or the U.S. Coast Guard for an undocumented vessel.

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii, 96822–2396.

* * * * *

Receiving Vessel means a vessel of the United States that is used to land lobster caught by another vessel.

* * * * *

3. In § 681.4, paragraphs (a)(1), (b), and (d) through (h) are revised, to read as follows:

§ 681.4 Permits.

(a) *General.* (1) Any vessel of the United States engaged in commercial fishing for lobsters in the Management Area must have a permit issued under this part. Vessels engaged in commercial fishing for lobsters in Permit Area 2 or Permit Area 3 require only a permit issued under this section. Vessels engaged in commercial fishing for lobsters in Permit Area 1 require only a limited access permit issued under § 681.30.

* * * * *

(b) *Applications.* (1) An application for a permit under this section should be submitted to the Pacific Area Office by the vessel owner, or a designee of the owner, at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on an application form obtained from the Pacific Area Office and must provide the following information:

(i) Type of application; whether the application is for a new permit or a renewal; and what permit area it is for;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horsepower;

(xii) Approximate fish hold capacity;

(xiii) Number of crew (excluding operator);

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

* * * * *

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office at least 10 days before the effective date of the change, or if an unplanned change, within 10 days after the change. Failure to report such changes may result in termination of the permit.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is submitted, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire at 2400 hours local time on December 31 following the effective date of the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

* * * * *

4. In § 681.5, paragraph (b)(2)(ix) is redesignated (b)(2)(x) and new paragraphs (b)(2)(ix), (c)(3)(v), and (d) are added, to read as follows:

§ 681.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(ix) General condition of sea surface for each day fished.

* * * * *

(c) * * *

(3) * * *

(v) Number of lobsters, by tail weight (in 2-ounce intervals), by species.

* * * * *

(d) *Transshipment.* If any vessel, other than the harvesting vessel, is used to transship lobsters from the harvesting vessel to port, then the receiving vessel landing the lobster must, within 72 hours of each landing, submit to the Regional Director the original copies of the NMFS Daily Lobster Catch Reports that were completed by the operator of the vessel that harvested the lobster.

§ 681.6 [Amended]

5. In § 681.6, in each place it occurs in paragraphs (a), (b), and (c), the word "permit" is replaced with the word "official".

6. In § 681.7, paragraph (b)(1) is revised and paragraphs (b)(7) through (b)(12) are added, to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(1) Fish for, take, or retain lobsters:

(i) Without a limited access permit issued under § 681.30;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 681.24;

(iii) From closed areas for lobsters, as specified in § 681.23;

(iv) During a closed season, as specified in § 681.29; or

(v) In excess of the final quota, as specified in § 681.31.

* * * * *

(7) During a closed season, possess on a fishing vessel any lobster trap.

(8) Fail to report catch and effort data, as specified in § 681.31.

(9) Leave fishing traps unattended on the fishing grounds between trips or during a closed season, unless necessitated by emergency conditions, in which case the NMFS Pacific Area Office Law Enforcement Office must be notified within 24 hours after the vessel reaches port of the emergency necessitating this action and the location at which the traps were left. The NMFS Law Enforcement Office can be reached 24 hours a day by calling (808) 541–2727.

(10) Maintain on board the vessel or in the water, more than 1200 traps per fishing vessel, of which no more than 1100 can be assembled traps, as specified in § 681.24(e).

(11) Fail to make legibly the vessel's official number on all traps and floats used by the vessel, as specified in § 681.24(h).

(12) Land lobsters after the date announced in the **Federal Register** as specified in § 681.31(c)(6).

* * * * *

7. In subpart B, in § 681.24, paragraphs (e) through (g) are added, to read as follows:

§ 681.24 Gear restrictions.

* * * * *

(e) A maximum of 1200 traps per fishing vessel may be maintained on board or in the water, provided that no more than 1100 assembled traps are maintained, on board or in the water. If more than 1100 traps are maintained the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(f) A vessel may not leave any trap on the fishing grounds, except in the event of an emergency, in which case the vessel operator must notify the NMFS Pacific Area Office Law Enforcement office of the location and number of traps within 24 hours after the vessel reaches port.

(g) The vessel's official number must be marked legibly on all traps and floats used by that vessel.

§§ 681.30–681.35 [Redesignated as §§ 681.40–681.45]

8. In subpart C, §§ 681.30 through 681.35 are redesignated §§ 681.40 through 681.45.

9. Subpart B is amended by adding new §§ 681.29 through 681.32 to read as follows:

§ 681.29 Closed season.

Lobster fishing is prohibited during the months of January through June, inclusive.

§ 681.30 Limited access management program.

(a) *General Requirements.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel under this section. Only one permit will be assigned to any vessel.

(2) A limited access permit is valid for fishing only in Permit Area 1.

(3) The application form for a limited access permit is the same as the application form for a general permit, described in § 681.4(b)(2). If the application is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from the Pacific Area Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(4) A maximum of 15 limited access permits can be valid at any time.

(5) No fee is required for a limited access permit.

(6) Any change in the information specified in the application form for a limited access permit must be reported to the Pacific Area Office at least 10 days before the effective date of the change, or if unplanned within 10 days after the change. Failure to report such changes may result in termination of the permit.

(7) If an incomplete or improperly completed application form is submitted, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the notification, the application will be considered abandoned.

(8) A limited access permit expires at 2400 hours local time on December 31 following the effective date of the permit.

(9) A limited access permit that has been altered, erased, or mutilated is invalid.

(10) A limited access permit may be issued to replace a lost or mutilated permit. An application for a replacement permit is not considered a new application.

(11) A limited access permit must be on board the vessel at all times and is subject to inspection upon request of any authorized officer.

(12) Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(b) *Issuance of initial limited access permits.* (1) An application for an initial limited access permit must be submitted to the Pacific Area Office within 90 days of the effective date of this rule.

(2) The Regional Director will issue initial limited access permits based on the eligibility criteria listed below. An initial permit will be issued to the person who owned the vessel when the vessel was last used to land lobsters from Permit Area 1 in 1990. Priority for initial permits will be given, in descending order, to an owner of a vessel that was used to make at least one landing of lobsters from Permit Area 1:

(i) Before August 8, 1985, and during every calendar year from 1985 through 1990;

(ii) Before August 8, 1985, and during calendar year 1990;

(iii) During 1990 only.

(3) If fewer than 15 initial limited entry permits are issued under (b)(2), then the remaining initial permits will be issued to vessel owners based upon a point system.

(i) One point shall be assigned for each calendar year prior to 1985 that the applicant was the owner or operator of a vessel that was used to land lobsters from Permit Area 1.

(ii) Under the point system, applicants will be ranked by number of points, beginning with the applicant having the most points and descending to the applicant having the least. Available permits will be issued to applicants according to this ranking in descending order.

(iii) If two or more applicants have the same number of points and there are insufficient permits for all such applicants, the Regional Director shall issue permits to such applicants through a lottery.

(iv) No points shall be assigned under paragraph (b)(3)(i) for lobster landings by a vessel for which an application is submitted under paragraph (b)(2).

(c) *Renewal of limited access permits.* (1) An application for renewal of a limited access permit must be submitted to the Pacific Area Office by the permit holder using the application form described in § 681.4(b)(2). Applications should be filed no later than December 15 prior to the year for which the permit will be valid.

(2) The Regional Director will renew a limited access permit for a subsequent year if the permitted vessel was used to:

(i) Land the equivalent of at least four lobsters for each trap normally used, calculated over one calendar year, and

(ii) Make those landings during at least one of the 2 years prior to the year for which the new permit will be valid.

(3) In paragraph (c)(2)(i) of this section, the number of lobsters "for each trap normally used" is calculated by taking the sum of all legal lobsters caught and retained by the harvesting vessel divided by the average number of traps deployed by the vessel based on logbook records for the year.

(d) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except an owner who qualifies initially for more than one permit. Layering of partnerships or corporations shall not insulate a permit from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, the Pacific Area Office must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new owner according to the requirements of paragraph (a) of this section. The transferred permit is not valid until this process is completed.

(e) *Replacement of limited access permit.* An owner of a permitted vessel may, without limitation, transfer his or her limited access permit to another vessel provided that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the owner's intent to transfer the permit.

(f) *Issuance of limited access permits to new applicants.* (1) The Regional Director may issue limited access permits under this paragraph when fewer than 15 vessel owners hold permits.

(2) When the Regional Director has determined that limited access permits may be issued to new persons, a notice shall be placed in the **Federal Register**, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) An application for a new limited access permit must be filed within 90 days following publication of the **Federal Register** notice.

(4) Limited access permits issued under this paragraph will be issued first to applicants qualifying under subparagraph (f)(4)(i). If the number of limited access permits available is greater than the number of applicants that qualify under subparagraph (f)(4)(i), then limited access permits will be issued to applicants under subparagraph (f)(4)(ii).

(i) First priority to receive limited access permits under this paragraph goes to owners of vessels that were used to land lobster from the NWHI during the period from 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be awarded by the Regional Director through a lottery.

(ii) Second priority to receive limited access permits under this paragraph goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall award the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that made landings of lobster from Permit Area 1; and

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial lobster fishing in Permit Area 2, or commercial fishing for fish, other than lobster, in Permit Area 1; and

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the exclusive economic zone surrounding Hawaii.

(iii) If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall award the permits through a lottery.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

§ 681.31 Fleet harvest quota management program.

(a) *Final Quota.* The final quota for a calendar year shall:

(1) Apply to the total catch by all permitted vessels of spiny and slipper lobsters, as defined as legal under § 681.21 and § 681.22; and

(2) Be expressed in terms of numbers of lobsters. All legal lobsters caught and retained shall count toward the final quota, regardless of the product form (e.g., alive and dead, whole and tails) in which they are landed.

(b) *Initial Quota.* (1) The Regional Director shall use information in commercial fishing logbooks from previous years, and may use information from research sampling, to establish the initial quota, applying the quota formula of the fishery management plan.

(2) The Assistant Administrator shall publish a notice indicating the initial quota in the **Federal Register** by February 15 each year, and shall use other means to notify permit holders of the initial quota for the year.

(c) *Monitoring and Adjustment.* (1) Each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Director shall notify permit holders of the reporting method, schedule, and logistics, at least 30 days prior to the opening of the fishing season.

(2) The Regional Director shall use the catch and effort information provided during July (or the first month of the open season) to develop the final fleet harvest quota.

(3) If no fishing is conducted during July (or the first month of the open season), then the final quota shall equal the initial quota.

(4) The Assistant Administrator shall publish a notice in the **Federal Register** indicating the final quota, by August 15 (or within 45 days after the season opens), and shall use other means to notify permit holders of the final quota for the year.

(5) If the total reported catch has exceeded the estimated final quota by the date that the final quota is published, all lobster fishing in Permit Area 1 must cease immediately. Otherwise fishing may continue until the fleet harvest quota has been taken.

(6) The Regional Director shall project the date on which the final quota is expected to be taken, and a notice shall be published in the **Federal Register** to indicate the date after which further landings of lobster from Permit Area 1 will be prohibited.

§ 681.32 Conservation and management adjustments.

If the Regional Director determines that adjustments are warranted, the Regional Director may, with the Council's concurrence, initiate rulemaking to change the:

(a) maximum number of limited access permits that may be valid at any time;

(b) length of the closed season;

(c) maximum number of traps; or

(d) reporting requirements.

[FR Doc. 91-29986 Filed 12-11-91; 4:25 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Interim Standards and Guidelines for Protection and Management of RCW Habitat Within ¾ Mile of Colony Sites on the National Forests in Texas

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of decision notice and finding of no significant impact.

SUMMARY: On December 5, 1991, the Regional Forester of the Southern Region made a decision to implement alternative 3 and amend the National Forest Land and Resource Management Plan for the National Forests in Texas to include the interim standards and guidelines for the protection and management of the red-cockaded woodpecker (RCW). Alternative 3 provides the greatest probability of halting and preventing further population declines in the short-term while still allowing for multiple-use resource management of the National Forests in Texas.

Alternative 3 was selected as the interim standards and guidelines from five alternatives analyzed in the supplement to the May 9, 1990, environmental assessment (EA). The supplement to the EA was distributed for public and other agency review and comment in July 1991. Comments received were considered by the Regional Forester in making the decision.

Based on a biological evaluation prepared for all alternatives, it was determined that alternative 3 is not likely to adversely affect any threatened or endangered species, including the RCW. The USDI Fish and Wildlife Service concurred with this determination.

The decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. The forty-five (45) day appeal period begins on the day following the publication of the legal notice of the decision in the Lufkin Daily News, Lufkin, Texas. Following completion of the appeals process, the decision will be reviewed by the U.S. District Court for the Eastern District of Texas; and, if approved, it will then be implemented.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and the Council on Environmental Quality implementing regulation at 40 CFR 1508.27, the Forest Service gives notice, through the finding of no significant impact, that actions allowed under alternative 3 are not major federal actions and will not significantly affect, either individually or cumulatively, the quality of the human environment. Therefore, an environmental impact statement was not prepared.

ADDRESSES: The decision notice, finding of no significant impact, supplement, and environmental assessment may be reviewed at the Southern Regional Office for the Forest Service at 1720 Peachtree RD NW, Atlanta, GA 30367. Copies of these documents are available upon request from this office.

FOR FURTHER INFORMATION CONTACT: Joseph M. Dabney, U.S. Forest Service, RCW EIS Team Leader, 1720 Peachtree RD NW, Atlanta, GA 30367. Telephone (404) 347-5097.

Dated: December 10, 1991.

John E. Alcock,

Regional Forester.

[FR Doc. 91-29906 Filed 12-13-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis
Title: Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investments Abroad
Form Number: Agency—BE-133C; OMB—0608-0024
Type of Request: Revision of a currently approved collection
Burden: 1,400 respondents; 3,220 reporting hours
Average Hours Per Respondent: 2.3 hours
Needs and Uses: The survey collects data on actual expenditures in the preceding year, and projected expenditures in the current year, for property, plant, and equipment of majority-owned foreign affiliates of U.S. companies. Universe estimates are developed from the reported sample data. The data are needed to monitor current and projected developments in international investment, assess the potential impact of proposed or newly implemented U.S. or foreign government policies affecting international investment, and, based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer. Paul Bugg, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91-29972 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology

Title: Optical Characterization Methods for Materials, Processing, and Manufacturing in the Semiconductor Industry
Form Number: Agency—None OMB Number: 0693–
Type of Request: New
Burden: 50 responses; 50 reporting hours. Average time is one hour.
Needs and Uses: The survey information will be used to determine the industrial usefulness of optical methods for characterization of semiconductor materials, processes, and manufacturing to U.S. industry in to (1) evaluate and improve the U.S. competitive position of the semiconductor industry, and (2) aid in the development of programs in optical characterization that should receive future NIST priority.
Affected Public: Companies in the semiconductor industry
Frequency: One-time survey
Respondent's Obligation: Voluntary
OMB Desk Officer: Maya A. Bernstein 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–29973 Filed 12–13–91; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket Nos. 9138–01, 9138–02]

Final Decision and Order; Babeck Seroush

In the Matter of: Babeck Seroush, individually and doing business as International Processing Systems GmbH, Respondents.

On September 27, 1989, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued a ten-count charging letter against Babeck Seroush, individually and doing business as International Processing Systems GmbH, alleging violations of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991)) (the Act),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations). Specifically, Seroush allegedly conspired with a Yuri Geifman and others "to effectuate the export of U.S.-origin goods from the United States to North Korea and the Union of Soviet Socialist Republics through West Germany, without obtaining the required authorization from the Department" in violation of § 787.3 of the Regulations (Charge 1). The remainder of the letter alleged that Seroush, in violation of §§ 787.2 and 787.6, induced Geifman to ship controlled items without the necessary validated licenses on three separate occasions (Charges 2–7) and that Seroush, through Geifman, completed or caused to be completed false or misleading Shipper's Export Declarations in violation of § 787.5 of the Regulations (Charges 8–10).

Seroush answered the charging letter on October 30, 1989. Extensive discovery was conducted by both parties, and several contested issues arose in connection with discovery. On April 6, 1990, Seroush filed a Motion to Dismiss the Proceedings. The Department opposed the Motion to Dismiss on April 23, 1990.

On October 31, 1991, the Administrative Law Judge issued his Recommended Order granting Seroush's Motion to Dismiss. On November 12, 1991, the Department filed its Initial Submission. The Department asks that the Recommended Order be vacated. However, the Department recommends that dismissal of the charges against Seroush be affirmed for reasons relating to the conservation of the Department's limited enforcement resources.

I have carefully reviewed the record and the submissions of the parties. Based on my review, and in light of the recommendation by the Department, I affirm the finding by the ALJ regarding the sufficiency of the evidence in the record to support the charges against Seroush. The Recommended Order is otherwise vacated in its entirety.

Accordingly, for the foregoing reasons, I hereby dismiss the September 27, 1989 charging letter issued against Babeck Seroush, individually and doing business as International Processing Systems GmbH.

This Order shall constitute the Final Order and Decision in the record of this proceeding.

Dated: November 29, 1991.

Michael P. Galvin,

Acting Under Secretary for Export Administration.

[FR Doc. 91–29974 Filed 12–13–91; 8:45 am]

BILLING CODE 3510-DT-M

[1] The Act expired on September 30, 1990. Executive Order 12730 55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706) (1991)).

International Trade Administration

[A–357–405]

Barbed Wire and Barbless Fencing Wire From Argentina; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on Barbed Wire and Barbless Fencing Wire from Argentina.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION: On October 31, 1991 the Department of Commerce (the Department) published in the **Federal Register** (56 FR 56054) its intent to revoke the antidumping duty order on Barbed Wire and Barbless Fencing Wire from Argentina (48 FR 49126, November 13, 1983). The Department may revoke an antidumping duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties.

We had not received a request to conduct an administrative review of this order for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On November 21, 1991, Insteel Industries, Inc., the petitioner and Keystone Consolidated Industries, Inc., an interested party, objected to our intent to revoke this order. Therefore, we no longer intend to revoke the order.

Dated: December 6, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-29976 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 1, 1991, the Department of commerce published the preliminary results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. The review covers fifteen manufacturers/exporters of this merchandise to the United States for the period April 1, 1987 through March 31, 1988 (fourth review), and sixteen manufacturers/exporters for the period April 1, 1989 through March 31, 1990 (sixth review).

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, we have changed the final results from those in the preliminary results of review.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, Philip C. Marchal, or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 36765) the preliminary results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18336, April 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1990).

Scope of the Review

Imports covered by the review are shipments of color television receivers (CTVs), except for video monitors, complete or incomplete, from Taiwan. The order covers all CTVs regardless of tariff classification. Prior to January 1, 1989, the merchandise was classified under items 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, and 684.9663, of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under items 8528.10.80, 8529.90.15, and 8540.11.00 of the Harmonized Tariff Schedule (HS). TSUSA and HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers fifteen manufacturers/exporters of CTVs, except for video monitors, from Taiwan, for the period April 1, 1987 through March 31, 1988 (fourth review), and sixteen manufacturers/exporters of CTVs, except for video monitors, from Taiwan, for the period April 1, 1989 through March 31, 1990 (sixth review).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22(c) of the Commerce Regulations. We received comments from the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC, the Independent Radionic Workers of America, and the Industrial Union Department, AFL-CIO (the petitioners); Zenith Electronics Corp. (Zenith); and the following respondents: Action Electronics Co., Ltd. (Action), AOC International Inc. (AOC), Hitachi Television (Taiwan), Ltd. (Hitachi), Fulet Electronic Industrial Co. (Proton), Shin-Shirasuna Electric Corp. (Shirasuna), and Tatung Co. (Tatung).

We have corrected any clerical errors noted by the petitioners and respondents, and have addressed them specifically in this notice.

General Comments

All general comments refer to both the fourth and the sixth reviews.

Comment 1: Zenith argues that the Department used the incorrect U.S. tax base in determining the amount of commodity tax and value added tax (VAT) to add to United States price (U.S. price). Zenith notes that the duty paying value (DPV), *i.e.*, the tax base, for determining the amount of commodity tax for merchandise from bonded warehouses is defined in the preliminary results as the ex-factory price. Zenith claims that the DPV used by the Department to determine the commodity tax for bonded-factory shipments to the United States is overstated because it includes elements which are not included in an ex-factory price. According to Zenith, these elements include U.S. selling, general, and administrative (SG&A) expenses, profit attributable to the U.S. subsidiary, and U.S. estimated antidumping duties. Zenith also contends that the DPV is inflated by the inclusion of imputed Taiwan import duties, which would not be included in the ex-factory price of export merchandise where import duties are not collected by reason of exportation of the merchandise. Zenith advocates determining the DPV by deducting f.o.b. charges, such as foreign inland freight and brokerage, from the f.o.b. price.

Zenith also claims that the tax base used for calculating the VAT, defined in the preliminary results of review as the price to the unrelated customer, is overstated because it includes expenses which are incurred after the merchandise is exported from Taiwan. Zenith argues that the Department should use as the VAT base the price at which the merchandise is sold for exportation, whether or not it is the price to an unrelated purchaser.

Action, AOC, Proton, and Tatung respond that Zenith's proposals regarding the calculation of tax adjustments are inconsistent with the antidumping duty law and with the Department's practice. They note that section 772(d)(1)(C) of the Tariff Act requires that U.S. price be increased by "the amount of taxes imposed in the country of exportation directly upon the exported produce * * * which have been rebated, or which have not been collected, by reason of exportation of the merchandise to the United States." They argue that the amount of tax which would have been collected on sales to the United States should be based on the commodity tax actually paid by the respondents on their sales in the home market. Accordingly, these respondents contend that the imputed commodity tax on the U.S. sale should be based on the actual DPV of the home market comparison model, adjusted, where necessary, for differences in merchandise (difmer).

Action, AOC, Proton, and Tatung also reply that Zenith's proposal of using export prices, even if they are prices to related parties, as the tax base on which the VAT is calculated is incorrect because it disregards the way in which the VAT is actually calculated in Taiwan. They argue that the price charged to unrelated parties in the home market is the appropriate tax base on

which to calculate the VAT, since the VAT is only imposed in the home market and not on exports. However, they contend that, if the VAT is based on U.S. prices, the Department should continue to use the price to the unrelated customer in the United States as the tax base. These respondents claim that this is consistent with the Department's methodology in other antidumping cases, e.g., High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition (56 FR 32376, July 16, 1991).

Department's Position: We disagree with Zenith. Also, we disagree with respondents that we should base the amount of community tax added to U.S. price on the home market DPV, or the VAT base on the home market price to the unrelated customer. In this case, we have calculated the commodity tax base and the VAT base in a manner consistent with our prior practice in the television cases. See, e.g., our response to Comment 2 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31378, July 10, 1991) (Fifth Taiwan CTV Review).

The commodity tax base in Taiwan, or the DPV, is submitted by each firm and approved by the Taiwan authorities. For CTVs sold from bonded factories, in Taiwan the DPV is the ex-factory price; for CTVs sold from unbonded factories, the DPV consists of production costs, SG&A costs, and profit, *i.e.*, the price to the first unrelated customer. The VAT tax base in Taiwan is the price to the first unrelated customer.

In order to ensure that foreign market value (FMV) and U.S. price are comparable, and to impose the tax at a point comparable to the point at which the home market tax is assessed, it is necessary to determine at what point in the manufacturing/marketing chain the tax authority in Taiwan would have imposed the taxes on the exported merchandise. Accordingly, we have calculated the U.S. commodity tax base for each type of sale (*i.e.*, whether from a bonded or unbonded warehouse) and the VAT base by applying the same formulae used to calculate the home market tax bases. In other words, we used the terms and conditions of home market sales to determine the imputed tax base for U.S. sales. Therefore, with regard to the commodity tax, we used the ex-factory price of the merchandise for sales from bonded factories. This price is not overstated because it includes the same elements as are in the home market ex-factory price, which serves as the base for the commodity tax. For unbonded factories, we used the price to the first unrelated customer in the United States as the U.S. tax base. For the VAT, we used the price to the first unrelated customer in the United States as the U.S. tax base, not the price at which the merchandise is sold for exportation, since the home market VAT base is the price to the first unrelated customer. The tax rate in Taiwan was then applied to the U.S. tax base to determine the amount of tax that should be added to U.S. price, pursuant to 19 U.S.C. 1677a(d)(1)(C).

Comment 2: Zenith contends that the Department is required to measure the amount of tax which is passed through to home market purchasers, pursuant to 19 U.S.C. 1677a(d)(1)(C). As support for its argument, Zenith relies on decisions by the Court of International Trade (CIT) in *Zenith Electronics Corporation* v. *United States*, 633 F. Supp. 1382 (CIT 1986), *appeals dismissed*, 975 F.2d. 291 (Fed. Cir. 1989) (*Zenith I*), *Daewoo Electronics Company, Ltd.* v. *United States*, 712 F. Supp. 931 (Ct. Int'l Trade, 1989) (*Daewoo*), and *Zenith Electronics Corporation* v. *United States*, Slip Op. 91–66 (July 29, 1991) (*Zenith II*). Moreover, citing *Daewoo Electronics Company, Ltd.* v. *United States*, 760 F. Supp. 200 (Ct. Int'l Trade, 1991), Zenith argues that, because the respondents benefit from tax adjustments to U.S. price, they should be required to establish their entitlement to such adjustments by determining the amount of home market tax incidence, in accordance with a methodology chosen by the Department. Zenith argues that since the respondents have not established their entitlement to a tax adjustment, and the Department has failed to determine the home market tax incidence, there is no basis for a tax adjustment to U.S. price.

Action, AOC, Proton, and Tatung reply that they support the Department's long-standing position that the antidumping law, properly interpreted, does not require measurement of the incidence of indirect taxes in the home market. The respondents cite as support the Fifth Taiwan CTV Review and Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part (55 FR 47093, November 9, 1990) (*Third Taiwan CTV Review*).

Department's Position: We do not agree with the CIT's decisions in *Zenith I, Daewoo*, or *Zenith II*, but have not had an opportunity to appeal this issue on its merits. Consistent with our long-standing practice, we have not attempted to measure the amount of tax incidence in the Taiwan home market. We do not agree that the statutory language limiting the amount of adjustment to the amount of commodity tax "added to or included in the price" of CTVs sold in the Taiwan home market requires the Department to measure the home market tax incidence. See our response to Comment 1 in the Fifth Taiwan CTV Review. Regarding Zenith's argument that respondents must establish entitlement to the tax adjustment to U.S. price, we are satisfied that the record shows that the tax was charged and paid on the home market sales. Therefore, respondents are entitled to the adjustment to U.S. price.

Comment 3: Zenith argues that the Department incorrectly failed to cap the amount of tax added to U.S. price by the amount of home market tax included in the home market price of the comparison model, and has incorrectly adjusted FMV for differences between the amount of home market tax and the amount of tax added to U.S. price. Zenith cites the CIT's decision in *Zenith I* as support for its argument that the amount of tax added to U.S. price must not exceed the amount of tax included in the home market price, and that the Department is prohibited from using the authority of 19 U.S.C. 1677b(a)(4)(B) to make a circumstance-of-sale (COS) adjustment to FMV for differences in taxes in order to neutralize the tax adjustment.

Action, Proton, the Tatung also argue that the Department should not make a COS adjustment to FMV for the difference between home market and U.S. commodity taxes, citing the CIT decision in *Zenith Electronics Corporation* v. *United States*, 755 F. Supp. 397 (Ct. Int'l Trade, 1990) as support for their arguments. Accordingly, respondents claim that the commodity tax should be added to U.S. price without an adjustment to home market price.

Department's Position: We disagree with Zenith and respondents. In this case, we followed our practice established in prior administrative reviews regarding the calculation of commodity tax and COS adjustments for differences in actual and imputed commodity taxes. We did not "cap" or otherwise reduce the amount of imputed tax added to U.S. price as this would have been inconsistent with our efforts to make an appropriate "apples-to-apples" comparison between FMV and U.S. price. In order to avoid artificially inflating or deflating margins as a result of differences between Taiwan

commodity taxes and the imputed taxes added to U.S. price, we have made a COS adjustment equal to the difference between the tax collected in Taiwan and the imputed tax calculated on the U.S. sales. See our response to Comments 3 and 4 in the Fifth Taiwan CTV Review, and to Comment 1 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12702, March 27, 1991) (Fifth Korean CTV Review).

Comment 4: Regarding adjustments to FMV for home market selling expenses, Zenith argues that the Department has failed to take into account earnable interest on payments made after an obligation to pay is incurred. Zenith reasons that, when an obligation is paid after it is incurred, the respondents have, in effect, been granted "delayed payment terms," and the benefit from paying these obligations on a delayed basis should be taken into account when calculating the true cost of a claimed selling expense. According to Zenith, the true cost of an after-sale rebate, for example, should be measured as the amount of the paid rebate less any interest earned during the period that payment of the rebate was outstanding. Accordingly, Zenith argues that the Department should reduce the adjustment to FMV for home market selling expenses by the amount of any interest earnable as a result of delayed payment of those expenses.

Action, AOC, Proton, and Tatung reply that the Department has rejected Zenith's argument on numerous occasions, citing the Department's position in Comment 6 in the Fifth Taiwan CTV Review, Comment 2 in the Third Taiwan CTV Review, and Comment 2 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (55 FR 26225, June 27, 1990) (Fourth Korean CTV Review).

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have determined that respondents have accurately quantified their home market selling expenses, and that their claims accurately reflected these expenses, we have not reduced them by the amount of any imputed "savings" realized as a result of delayed payment. See our response to Comment 6 in the Fifth Taiwan CTV Review, and to Comment 2 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (56 FR 56189, November 1, 1991) (Tenth Japanese TV Review).

Comment 5: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). Zenith notes that under 19 U.S.C. 1677a(e)(2), the Department shall remove from ESP "the amount, if any, of expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise." According to Zenith, antidumping-related legal expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Action, AOC, Proton, and Tatung respond that it is the Department's long-standing practice to exclude antidumping legal expenses from its calculations, and urge the Department to continue to follow this practice, citing the Fifth Taiwan CTV Review, the Third Taiwan CTV Review, and the Fourth Korean CTV Review. They also note that the CIT has approved this practice in *Zenith II.*

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this order, the antidumping duty order on color television receivers from the Republic of Korea, and the antidumping finding or color television receivers, monochrome and color, from Japan, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. Moreover, as respondents note, this position was recently affirmed in *Zenith II.* See our response to Comment 7 in the Fifth Taiwan CTV Review, our response to Comment 3 in Tenth Japanese TV Review, and our response to Comment 5 in the Fifth Taiwan CTV Review.

Comment 6: Zenith argues that the Department should deduct from U.S. price payments of estimated antidumping duties and any expenses related to such payments. According to Zenith, these items should be deducted from U.S. price, along with the estimated ordinary duties paid, because 19 U.S.C. 1677a(d)(2)(A) specifically requires that "United States import duties" and charges "incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States" be deducted from U.S. price.

Action, AOC, Proton, and Tatung support Department's well-established policy of not adjusting U.S. price for antidumping duty deposits, citing Fifth Taiwan CTV Review, the Third Taiwan CTV Review, and the Fourth Korean CTV Review as support for their argument.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this order, we believe that deducting estimated amounts of antidumping duties in our calculations would result in inaccurate margins. We do not consider payments of estimated antidumping duties to be expenses related to the sales of the merchandise under consideration for these review periods. Further, given the possibility that these estimated duties could vary significantly from duties that may be assessed, we do not consider them to be "expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for the purpose of determining U.S. price. Finally, estimated duties and duties assessed are paid by the importer, which, in some cases, is unrelated to the party whose sales are under review. As a result, we have not deducted them from U.S. price in these final results. See our response to Comment 8 in the Fifth Taiwan CTV Review, our response to Comment 4 in Tenth Japanese TV Review, and our response to Comment 6 in the Fifth Taiwan CTV Review.

Comment 7: Zenith contends that the Department erroneously treated selling commissions in the United States as though they consisted entirely of indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. Zenith argues that, since FMV has already been adjusted for direct selling expenses, an offset to FMV comprised of indirect selling expenses up to the full amount of the U.S. commission overcompensates for the indirect portion of the commission and effectively negates the deduction from U.S. price of the direct expense portion of the commission. Accordingly, Zenith claims that commissions should be broken down into their direct and indirect expense components, and that the offset to FMV should be capped at the level of the indirect expense portion.

Zenith also argues that all indirect selling expenses incurred in the home market on commissioned U.S. sales should be deducted from U.S. price. Zenith is concerned that unless this adjustment is made, such expenses may be commingled with home market indirect expenses included in offsets to FMV.

Action, AOC, Proton, and Tatung respond that the Department has rejected this argument previously, for example, in the Fifth Taiwan CTV Review, the Third Taiwan CTV Review, and the Fourth Korean CTV Review. They urge the Department to continue to offset the full amount of the U.S. commission with home market indirect selling expenses whenever commissions are paid in the United States but not in Taiwan. They also note that there are not "indirect" components of a commission or any other direct expense, citing the CIT decision in *AOC International* v. *United States*, 721 F. Supp. 314 (CIT 1989) as evidence.

Department's Position: We disagree with Zenith. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. Indeed, it is not necessary to examine how the recipient of the commissions spends the money because, to the seller, such monies represent direct expenses incurred as a result of that particular sale. As a result, we have offset the full amount of the U.S. commissions in these final results. See our response to Comment 9 in the Fifth Taiwan CTV Review, our response to Comment 4 in Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 37339, August 6, 1991), and our response to Comment 7 in the Fifth Korean CTV Review.

Regarding Zenith's concern over the possible existence of home market expenses that might be associated with commissioned U.S. sales, we find nothing in the record to suggest that such indirect expenses exist, and Zenith has not pointed to evidence in the record to indicate to the contrary. See our response to Comment 9 in the Fifth Taiwan CTV Review, and to Comment 7 in the Fifth Korean CTV Review.

Comment 8: Zenith contends that, where constructed value (CV) is relied upon as the basis for FMV, the Department should include in its calculation of CV both home market inland freight and Taiwan home market taxes. According to Zenith, these items must be included among the "general expenses" component of CV because 19 U.S.C. 1677b(e)(1)(B) requires that general expenses encompass what is "usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration." Zenith argues that since a home market price-based FMV relies upon delivered prices, CV general expenses must include market inland freight, which is "usually reflected" in the home market sales price. Also, Zenith argues that, in view of the Department's insistence that differences between home market taxes and imputed taxes added to U.S. price are subject to COS adjustments, which are limited to selling expense adjustments under 19 CFR 353.56, the Taiwan commodity tax and VAT must be included as a general expense in calculating CV.

In addition, citing the CIT's decision in Zenith II, Zenith argues that, with regard to COS adjustments made to CV, the Department should ensure that these adjustments are not allowed to reduce the amount of general expenses and profit included in CV so that it falls below the minimum levels required by the statute.

Action, AOC, Proton, and Tatung respond that it is the Department's well-established practice to exclude home market inland freight expenses from CV. They argue that since CV is a surrogate ex-factory price created for comparison to U.S. price, it must be calculated net of home market freight expenses. They also reply that Zenith's position that commodity taxes and the VAT should be included in general expenses in calculating CV is erroneous, and note that the Department has rejected this position as inconsistent with the statute. Respondents cite as support for this argument Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 34177, July 26, 1991) (the "statute does not provide for the inclusion of commodity taxes in our CV calculations"). They also argue that there is no merit to Zenith's argument concerning COS adjustments, because the statutory 10 percent minimum for general expenses does not operate to limit COS adjustments, and that the Department should continue to apply COS adjustments to CV without the limitation suggested by Zenith.

Department's Position: We disagree with Zenith that these expenses should be included in CV. As we have stated in previous reviews, neither home market inland freight nor home market taxes should be included in CV. Pursuant to 19 U.S.C. 1677b(e), the Department constructs an ex-factory value which consists of the sum of the cost of manufacture (COM), general expenses, profit on home market sales, and the cost of packing the merchandise for shipment to the United States. In order to make an "apples-to-apples" comparison of this FMV to U.S. price, all taxes and movement expenses are removed from U.S. price. As a result, there is no basis in the statute or otherwise for including home market inland freight or taxes in CV. See our response to Comment 5 in the Fifth Taiwan CTV Review, and our response to Comment 7 in Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 34177, July 26, 1991).

We disagree with Zenith that COS adjustments should not be allowed to reduce the amount of general expenses and profit included in CV below the minimum levels required by the statute. There is nothing in the statute or our regulations which directs us to limit such adjustments so as not to reduce the amount of general expenses and profit below the statutory minimums. See our response to Comment 8 in Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13917, April 6, 1989). Moreover, we do not agree with the CIT's decision in Zenith II regarding this issue, but have not had an opportunity to appeal the issue on its merits. Furthermore, the CIT's decision in Zenith II involved the reliability of actual selling expenses associated with sales from a non-viable home market. The Court held that "if sales in the home market are so insignificant that they lead Commerce to reject them as a source of foreign market value and choose constructed value instead, the actual selling expenses associated with those insignificant home market sales should also not be relied upon for any related purposes." Zenith II, Slip Op. 91–66 at 18. In these reviews, the home market was considered viable and contained significant sales to serve as a legitimate source for the COS adjustments.

Comment 9: Zenith contends that the Department's method of calculating the cash deposit rate as a percentage of the statutory U.S. price of the reviewed entries understates the best estimate of ultimate liability on future entries. Zenith notes that the U.S. Customs Service (Customs) uses the entered

value as the value against which the cash deposit rate is applied, while the Department determines cash deposit rates on the basis of U.S. price. Zenith argues that, because the entered value is often lower than the U.S. price, especially when, as in this case, a large amount is added to U.S. price for tax adjustments, the dollar amount of the cash deposit is less than it would be if the Department used the entered value to calculate the cash deposit.

Action, AOC, Proton, and Tatung respond that Zenith's position is inconsistent with the Department's long-established practice of calculating the deposit rate as a percentage of U.S. price, and they urge the Department to continue this practice. As support for their argument, respondents cite the Department's decision in the Fifth Taiwan CTV Review, the Third Taiwan CTV Review, and the Fourth Korean CTV Review, and note that the CIT affirmed this practice in Zenith II.

Department's Position: In this review, we have followed our practice as explained in previous reviews. See, e.g., our response to Comment 10 in the Fifth Taiwan CTV Review. Use of this practice was affirmed by the CIT in Zenith II. Section 736(a)(1) of the Tariff Act requires the Department to instruct Customs to "assess an antidumping duty equal to the amount by which the FMV of the merchandise exceeds the United States price of the merchandise." Thus, we are required to calculate an assessment rate based upon the reviewed entries' statutory U.S. price, not upon the entered value of the merchandise.

The actual assessment rate also serves as the best estimate for cash deposit purposes for all subsequent entries not yet subject to review. We use this rate because at the time the merchandise is entered, its U.S. price has yet to be determined. Insofar as cash deposits must be made at the time of entry, we instruct Customs to determine the amount of the required deposits by basing it upon a percentage of the only value available, *i.e.*, the entered value. However, if it is determined after a subsequent review that the amount of estimated duties deposited on these entries is less than the actual amount to be assessed, we will collect the difference together with interest.

Comment 10: Action, AOC, Proton, and Tatung in the fourth review, and Action, AOC, and Tatung in the sixth review, argue that the Department should not have deducted from home market price expenses incurred with respect to home market sales, and should not have deducted from U.S. price expenses incurred with respect to U.S. sales. They argue that such COS adjustments should be made only to FMV. Respondents cite 19 U.S.C. 1677b(a)(4) of the statute and the CIT's decision in *Timken Company* v. *United States*, 673 F. Supp. 495, 509–12 (CIT 1987) (Timken) as support for their argument.

Department's Position: We disagree with respondents. Respondents cite to 19 U.S.C. 1677b(a)(4) of the statute and Timken for their claim that COS adjustments should only be made to FMV. However, as stated in previous administrative reviews, we are not following the CIT's decision in Timken. We continue to maintain that 19 U.S.C. 1677b does not prohibit us from deducting selling expenses from ESP, and that our adjustments to ESP are in accordance with section 772(e)(2) of the Tariff Act, which states that ESP shall be adjusted by deducting from it the amount of "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise." Accordingly, we made appropriate adjustments to ESP for warranties, guarantees and servicing, credit, direct advertising and promotion, royalties, and commissions. See our response to Comment 12 in the Fifth Taiwan CTV Review, and Comment 19 in Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 38417, August 13, 1991).

Company-specific Comments

AOC

Comment 11: Petitioners claim that, with respect to AOC in the fourth and sixth reviews, the Department erred in adding imputed commodity taxes and import duties to U.S. price, since AOC stated in its questionnaire response that it paid and then was immediately reimbursed the commodity tax and import duties on its home market sales.

Department's Position: We disagree with petitioners. Commodity tax and import duties were not included in AOC's reported home market price. In order to make an appropriate "apples-to-apples" comparison between the home market and U.S. price, we imputed commodity taxes and import duties and added the result to the home market price and U.S. price. This is consistent with the Department's practice in the prior review. See our response to Comment 3 in the Fifth Taiwan CTV Review.

Comment 12: Petitioners argue that, in the sixth review, the Department should require AOC to provide (1) notes to its international financial statements, (2) the auditor's report, (3) internal financial statements, (4) financial statements of AOC International (U.S.A.), and (5) annual reports. AOC argues that the Department should not consider this and certain other comments relating to AOC because they were stated in a June 27, 1991 submission by petitioners, and later incorporated into petitioners' brief by reference. AOC argues that by incorporating their arguments by reference, petitioners have not satisfied the Department's regulatory requirement that all arguments must be separately presented in full in the parties' briefs.

Department's Position: We requested and received all of the above documents except the annual reports. In carefully examining these documents, the Department determined that because the submitted documents provide adequate information to perform our analysis for these final results, the annual reports are not needed. Regarding AOC's claim that the Department should not consider comments incorporated by reference into petitioners' case brief, we agree that our regulations require parties to present in full in their case briefs all arguments they feel are relevant to the Secretary's determination. However, because this is a fairly new requirement, and petitioners' comments were on the record of this review, in this instance we have decided to accept petitioners' incorporation of such comments into their case brief.

Comment 13: Petitioners contend that, in the sixth review, AOC should be required to report all sales that occurred during the period of review, regardless of delivery date. Further, the Department's questionnaire does not exempt sales that were made during the review period but delivered after the review period.

Department's Position: We disagree with petitioners. Section 353.22(b)(1) of the Commerce regulations provides that an administrative review will cover, as appropriate, entries, exports, or sales of the merchandise during the twelve months immediately preceding the most recent anniversary month. In prior reviews of this order, it has been the practice of the Department to review AOC's shipments, rather than sales, made during the review period. When this practice is maintained from period to period, all sales will eventually be captured.

Comment 14: Petitioners argue that, in the sixth review, the Department should require AOC to reallocate brokerage charges for its third-country sales on a volume basis, since AOC has stated that brokerage charges were based on the

volume shipped. They note that AOC reported in its questionnaire response that it allocated these charges based on the proportion of the selling price of each model to the total value of the shipment.

Department's Position: We disagree with petitioners. In prior reviews, the Department has accepted AOC's methodology in allocating brokerage and handling charges on the basis of relative sales value. Although AOC incurs brokerage and handling charges on a per shipment basis, these expenses include numerous charges such as telex charges, fax charges, etc., which are not related to the volume contained in a given container. The Department believes that the allocation on the basis of relative sales value is reasonable.

Comment 15: Petitioners claim that, in the sixth review, the Department's use of certain third-country sales of AOC as the basis of FMV may be inappropriate since the invoice prices for these sales are in U.S. dollars. Petitioners urge the Department to review the relevant data to determine whether these sales constitute a fictitious market.

AOC responds that petitioners' allegation is without any foundation. It is common practice of exporters world-wide to quote prices in U.S. dollars because of the international character of U.S. currency in world commerce. AOC states that its sales to other third countries in the fourth review, such as Japan and Singapore, are also denominated in U.S. dollars.

Department's Position: We disagree with petitioners. Petitioners' request for an investigation of the fictitious market issue is based solely on the fact that sales were denominated in U.S. dollars. This fact, standing alone, does not provide a sufficient basis for the Department to conduct a fictitious market investigation. Moreover, we note that a substantial number of sales of goods are transacted in U.S. dollars, regardless of a product's country of origin and country of destination. Thus, the currency denomination cannot automatically make sales subject to a fictitious market investigation.

Comment 16: Petitioners contend that, in the sixth review, the Department should require AOC to calculate its U.S. warranty expenses by dividing total warranty costs during the period of review by the quantity sold during the period of review. Petitioners claim that AOC calculated its U.S. warranty expenses for each model by dividing warranty expenses incurred during the period by total quantity sold during the life of the model, rather than by quantity sold of the model during the period of review.

Department's Position: Petitioners misconstrue AOC's method of calculating its U.S. warranty expenses. Except for models being phased out during the period of review, AOC calculated its per unit U.S. warranty expenses for a given model by dividing warranty expenses incurred during the review period by the quantity of that model sold during the review period. For the phased out models, AOC calculated per unit warranty expenses by dividing warranty expenses incurred during the review period and the prior period (April 1988–March 1989) by the quantity sold during the same two-year period.

Comment 17: AOC states that, in the sixth review, the Department erred in failing to adjust FMV for credit expenses incurred in the home market.

Department's Position: We agree and have adjusted FMV for such credit expenses for these final results.

Comment 18: AOC claims that, in the sixth review, the Department failed to include home market indirect interest expenses in the ESP offset.

Department's Position: We agree and have added indirect interest expenses to other indirect selling expenses in deriving total indirect home market selling expenses for the ESP offset.

Comment 19: AOC contends that, in the fourth review, the Department should recognize reimbursements that AOC received from its home market distributor for certain research and development (R&D) and factory expenses. AOC offset its fixed overhead and R&D expenses with these reimbursements. According to AOC, the reimbursements were directly related to the development and production expenses for home market large-screen CTVs (*i.e.*, 25" and 28"). AOC contends that judicial precedent and well-established Department practice require the Department to accept AOC's reimbursements in its cost of production (COP) calculations.

Petitioners claim that the Department is correct not to offset AOC's production costs with monies it received from its home market distributor for alleged R&D on behalf of its home market distributor.

Department's Position: We disagree with AOC and therefore have not allowed the company's claimed reimbursement as an offset to CTV manufacturing costs. According to AOC officials, AOC's home market distributor provided funds to the company to help it defray costs incurred in developing and producing large-screen CTVs. These funds were distributed pursuant to a contract between the two companies. The companies entered into the reimbursement contract after the date on which AOC contends that it completed certain R&D projects, and concurrent with the date it began producing the new CTV products.

While at vertification, Department officials were able to determine that AOC's home market distributor did provide monies to AOC during this review period. Despite the company's claims, however, AOC officials could not produce any verifiable evidence that the company had undertaken the R&D activities which it claims were offset by these monies. AOC officials could not show Department verifiers accurate evidence of any amounts expended for large-screen CTV R&D projects or descriptions of the product development work claimed to have been undertaken by the company. Consequently, Department officials could not verify that AOC was reimbursed for large-screen CTV R&D activities, or for that matter R&D activities of any kind. Even if the Department were to accept all of the evidence AOC has provided to document the amount of expense it claims to have incurred in performing R&D for large-screen CTVs, the amount of expense the company claims to document falls short of the amount of the reimbursement AOC received from its home market distributor.

AOC has cited several cases in which the Department has accepted reimbursement payments. The circumstances in these cases differ from this case. See, *e.g.*, Certain Electrical Conductor Aluminum Redraw Rod from Venezuela (53 FR 24755, June 30, 1988) (the Department allowed the respondent to reduce certain general and administrative expenses only after it determined that such expenses were actually incurred) and High Information Content Flat Panel Displays and Display Glass Thereof from Japan (56 FR 32376, July 16, 1991) (the Department allowed a respondent to offset R&D expense with reimbursements, after the respondent provided clear documentation of the actual expenses incurred in generating the R&D reimbursement).

Comment 20: AOC contends that, in the fourth review, the Department should accept the company's product-specific methodology for calculating television labor costs. AOC contends that the labor-rate methodology it used in reporting to the Department: (1) Is consistent with the company's regularly-kept accounting records, which permit precise identification of labor costs with the product under review; (2) follows the instructions of the Department's antidumping questionnaire; (3) correctly reflects the relative production efficiencies between individual product

lines; and (4) was verified by the Department.

Petitioners claim that AOC's allocation of labor costs to CTVs was unreasonable and unsustainable when viewed in the context of AOC's total production of all products.

Department's Position: We disagree with AOC. All of AOC's production costs, whether covered or not covered by this review, are recorded in a single cost center, the Operating Division. In AOC's accounting system, this cost center is sub-divided into several sub-cost centers, each of which represents a particular production process and which is identified by a sub-cost center code. AOC contends that the Department should use the sub-cost center codes in allocating labor costs since these codes are recorded in the company's accounting system and permit precise identification of labor costs attributable to the products under review. However, the Department learned during verification that the sub-cost centers were primarily used in the accounting system for payroll purposes, and these payroll costs were not tied to specific products under review. Furthermore, when the Department's verifiers attempted to verify the production processes occurring within AOC's sub-cost centers, they learned that the physical layout of AOC's factory floor had changed significantly from the period of review to the time of verification and that AOC no longer had records showing how the sub-cost centers were arranged on the factory floor during the period of review. Consequently, the Department's verifiers could not verify what production processes occurred in the sub-cost centers and, thus, whether the codes were a reliable mechanism for allocating labor costs. Although AOC showed the Department's verifiers production cards which purportedly identified the sub-cost centers in which certain production processes during the period of review occurred, it could not demonstrate that the production cards established the relationship between the sub-cost centers and the various product produced. In short, AOC could not demonstrate that the codes were a reliable mechanism for allocating labor costs.

AOC also contends that the labor costs it reported were in accordance with the requirements of the Department's questionnaire, which requested product-specific costs whenever possible. Although the Department typically requires respondents to submit production costs on a product-specific basis, the Department also generally uses costs which reasonably reflect the expenses incurred at the facility manufacturing the product under review. AOC submitted labor processing rates which were markedly different for products subject, and those not subject, to this review. Given the similarity of the subject and non-subject products, the similar production processes for these products, and that all of AOC's production occurred in one production cost center, we found no justification for significantly different labor processing rates. Accordingly, we have calculated one labor processing rate for the entire Operating Division.

Comment 21: AOC contends that, in the fourth review, the Department double counted in deducting imputed credit from home market price and comparing the resulting figure to a cost of production which includes interest expense.

Department's Position: We agree with AOC. For these final results, we made no deduction for imputed credit from home market price before comparing the price to the cost of production.

Comment 22: AOC claims that, in the fourth review, the Department failed to deduct bank charges in its calculation of net prices of third-county models used for calculating FMV.

Department's Position: We agree with AOC. We have deducted the bank charges in our calculations for these final results.

Comment 23: AOC claims that, in the fourth review, the Department incorrectly calculated the weighted-average direct credit on home market sales. AOC contends that the Department apparently converted the credit expenses from New Taiwan (NT) dollars to U.S. dollars prior to deducting them from FMV.

Department's Position: We agree with AOC. For these final results, we have deducted from FMV direct credit expenses expressed in NT dollars.

Comment 24: AOC claims that, in the fourth review, the Department double counted U.S. warranty expenses when adjusting CV for comparison to purchase price sales. AOC requests that the Department correct this error.

Department's Position: We agree with AOC, and have made the appropriate corrections to the computer program.

Comment 25: AOC contends that, in the fourth review, the Department erred in not deducting home market indirect selling expenses up to the amount of the U.S. commissions on purchase price transactions.

Department's Position: We agree with AOC and have made the appropriate corrections to the computer program for these final results.

Comment 26: AOC claims that, in the fourth review, the Department may have omitted from the calculations some of the shipments made during the fourth review period pursuant to purchase price sales made in the third review period.

Department's Position: We agree with AOC and have included the appropriate calculations for these shipments in our computer program for these final results.

Funai

Comment 27: Zenith argues that the margin assigned to Funai in the sixth review, which becomes the cash deposit rate for future entries, should be 23.90 percent, which is Funai's rate for the fourth review period. Zenith notes that, in the fourth review, Funai did not respond to the Department's questionnaire, and was assigned the "best information" rate of 23.90 percent; however, in the sixth review, in which Funai reported that it had no shipments, the Department assigned a rate of 4.44 percent, Funai's rate from the fifth period of review, in which Funai also had no shipments. Zenith contends that the "no shipment" rate for Funai in the sixth review period should reflect the rate in the "last review in which there were shipments." According to Zenith, that is the fourth review period, in which Funai provided no response and was assigned the 23.90 percent rate.

Funai replies that, if the Department were to adopt Zenith's proposed rate for the sixth review period, it would penalize Funai for cooperating with the Department. Funai notes that, if it had not responded to the Department's questionnaire in the sixth review, it would have been assigned a rate equal to the higher of the highest calculated rate from that review period or its own prior rate of 4.44 percent. Since the highest rate from the sixth review period was 7.07 percent, Funai contends that the 23.90 percent rate would be punitive. Moreover, Funai argues that the current rate of 4.44 percent adequately serves as an estimate of potential duty liability; also, if the amount of duties deposited were less than the amount actually assessed, the Department would instruct Customs to collect the difference together with interest.

Department's Position: We agree with Zenith. Funai reported to the Department that, during the sixth review period, it had made no shipments. Accordingly, the rate for Funai for the sixth review period is the rate from the last period of review in which Funai had shipments. See Steel Wire Rope from

Japan; Final Results of Antidumping Duty Administrative Review (54 FR 6737, February 14, 1989). Funai had no shipments in the fifth review period. Therefore, we have assigned to Funai for the sixth review period the rate from the fourth period, which is the most recent period in which Funai had shipments.

Hitachi

Comment 28: Hitachi argues that, in the fourth review, the Department should use the packing information which is on the record of previous reviews of this case for those U.S. models which were produced prior to this review period. Hitachi notes that, for the preliminary results, the Department deducted packing costs from the COP before applying the percentages for SG&A expenses and for profit in the calculation of CV. However, Hitachi claims that, for those models produced prior to this period of review, the Department made no deduction for packing because it believed that such packing costs were not available. Hitachi contends that the packing cost information is on the record of previous reviews of this case, and that the Department should use this information in its calculations of FMV.

Department's Position: We agree in part. Although the packing costs for those models produced prior to the period of the fourth review should be deducted from COP prior to the application of the percentages for SG&A expenses and profit, they were not submitted for the record of this review prior to the date the preliminary results of review were issued. Therefore, they could not be used in this review (19 CFR 353.31). However, rather than making no deduction for these packing costs in calculating FMV, as in the preliminary results, we have deducted from COP, as the best information available (BIA), the average per-model packing costs reported for models produced during the fourth review period before applying the percentages for SG&A expenses and for profit.

Comment 29: Hitachi claims that, in the fourth review, the Department should not make a deduction for "indirect credit expenses," which were based on Hitachi's weighted-average interest rate and the average time to ship the merchandise from Taiwan to the United States. Hitachi argues that deducting this expense is inappropriate since it does not relate to the extension of credit by Hitachi to the unrelated customer in the United States. Moreover, according to Hitachi, the related U.S. reseller, Hitachi Sales Corporation of America (HSCA), does not pay Hitachi until after the merchandise arrives in the United States. Therefore, Hitachi contends that HSCA was not deprived of the use of money expended to purchase the merchandise during the time the merchandise was being shipped to the United States. Thus, Hitachi argues that there is no basis for this deduction, and that it should be eliminated.

Department's Position: We disagree with Hitachi. The Department imputes an interest expense for the time the merchandise is shipped to the United States in order to account for opportunity costs. These opportunity costs arise because Hitachi, not HSCA, was denied the use of funds which could have been invested in alternative financial arrangements yielding interest during the time the merchandise was shipped to the United States. Since the interest expense associated with the period of shipment cannot be isolated from other interest expenses, the Department must impute this interest expense.

Tatung

Comment 30: Tatung argues that, in both the fourth and sixth reviews, the Department erroneously added to FMV the difmer amounts representing the difference between the COM of the home market model and the COM of the U.S. model. According to Tatung, a negative difference means that the U.S. model is more expensive than the home market model, and a positive difference means the home market model is more expensive than the U.S. model. Therefore, Tatung claims that the variable representing the difference should be subtracted from FMV. Tatung points to the Department's calculations in previous reviews of this case as evidence that the difmer amounts should be subtracted in calculating FMV.

Department's Position: We agree with Tatung, and have changed the computer programming language accordingly.

Comment 31: Tatung argues that, in the fourth review, the Department used the wrong figures for the "Masterpiece Incentive" discounts which were granted on some U.S. sales. Tatung notes that it reported the correct discount amounts on a sale-by-sale basis in its June 28, 1989 submission, which the Department requested. Tatung contends that the Department should use these discount amounts in its calculations of U.S. price.

Department's Position: We agree with Tatung and have used the correct amounts for the "Masterpiece Incentive" discount.

Comment 32: Tatung argues that, in the fourth review, the Department double-counted Tatung's U.S. customs user fees. Tatung claims that the amount reported as U.S. duties on the U.S. sales database includes the customs user fees paid on the sales. However, according to Tatung, the Department double counted these fees by calculating the amount of user fees separately and then deducting that amount, as well as the amount of U.S. duty, which includes user fees, from ESP.

Department's Position: We agree with Tatung, and have made the correction.

Comment 33: Tatung argues that, in the sixth review, the Department made an error in its adjustment to home market price for home market inland freight. Tatung claims that this error was caused by a mislabeling of two columns in Tatung's supplemental response. Consequently, Tatung contends that the Department erroneously considered the expense incurred for freight from the regional warehouse to the unrelated dealers to be freight from the factory to the regional warehouse, and freight to the regional warehouse to be freight to the unrelated dealer. Tatung argues that the Department should correct this error for the final results.

Department's Position: We agree with Tatung, and have corrected the computer programming language.

Comment 34: Tatung argues that, in the sixth review, the Department used the incorrect commodity tax and import duty amounts for several of its U.S. models. According to Tatung, the Department used the commodity tax and import duty amounts reported on the U.S. sales database in its calculations of commodity tax differences and U.S. price. However, Tatung notes that these figures are based on Tatung's model-match selections, several of which were rejected by the Department. Therefore, Tatung claims that the tax and duty amounts for those U.S. models for which the Department chose a different home market model match are incorrect, and that the Department should correct this error by using the figures reported in Tatung's Section B questionnaire response.

Department's Position: We agree with Tatung, and have used the correct commodity tax and import duty amounts in our calculations of commodity tax differences and U.S. price.

Action

Comment 35: Action contends that, in the fourth review, the Department erred in calculating both the total duties due and the foreign unit price in dollars (FUPDOL) for Action's weighted-average dumping margins. Action argues

that a correction of these errors will result in no margins for Action.

Department's Position: We agree with Action. After revising our calculations to correct for these clerical errors, we have determined that there are no dumping duties due for Action in the fourth review.

Comment 36: Action claims that the Department, in the sixth review, improperly added Action's difmer figures to FMV when it should have subtracted them.

Department's Position: We agree. For the calculation of the final dumping margin for Action in the sixth review, we have subtracted the difmer figures from FMV.

Comment 37: Action asserts that the Department, in the sixth review, should combine and weight-average home market sales of models 7101 and 7103 to produce monthly 7101/7103 FMV figures for comparison with U.S. models 7101 and 7101H, since home market models 7101 and 7103 are identical in all respects except that each model uses a different brand of cathode ray tube (CRT). Action also claims that the Department must use both home market models since the Department selected both of them in its model-match selection letter.

Department's Position: We disagree. Home market models 7101 and 7103, as Action claims, are physically identical in all respects except that each model uses a different brand of CRT. In such situations, we consider factors other than the physical characteristics of the potential home market match, such as the COM. Since home market models 7101 and 7103 have different COMs, we selected home market model 7101, which had a COM closer to that of the U.S. model. The Department initially requested, in its model-match questionnaire, basic data on each of Action's home market models, such as sales quantity and value, specifications, cost, etc. In its response, Action did not report models 7101 and 7103 separately. Although we did indicate, in our subsequent model-match selection letter, both home market models as potential matches for the U.S. models concerned, we did so only because the models were indistinguishable at that point. Furthermore, in the model-match selection letter, we requested that Action report these models separately in its home market sales listing. Once Action reported data on these two models separately, we were able to determine that home market model 7101 was the more appropriate match for the reasons discussed above. In any event, the Department is not bound by tentative model-match selection made prior to the issuance of preliminary results.

Shirasuna (Technol-Ace Corporation)

All comments refer to the fourth review.

On August 14, 1991, the Department informed the petitioners, Zenith, and Shirasuna of various computer programming and clerical errors in the Department's preliminary results analysis of Shirasuna's response. We have made the following corrections to the appropriate programs in our final results calculations for Shirasuna: (1) Both CV and third-country price calculations were corrected to reflect an adjustment for the total difmer amount as reported in both NT dollars and yen; (2) in the CV calculations, packing was incorrectly deducted twice, and, therefore, we amended our program to correct this error; (3) we corrected an input error for the CV of model 9C1; (4) three third-country sales were not adjusted for movement expenses, and, therefore, we corrected this omission; (5) for purchase price sales, U.S. packing, credit expense, and U.S. royalty were inadvertently deducted from U.S. price, and, therefore, we recalculated U.S. price inclusive of these COS adjustments; (6) incorrect quantities were used for the calculation of three weighted-average monthly FMVs, and, therefore, these FMVs have been corrected to reflect the appropriate quantities; (7) for COS adjustments to FMV for comparison to purchase price sales, in the preliminary results we used the mean average for the U.S. credit and U.S. packing expenses, and, therefore, we have changed our final results program to use the actual credit and packing expenses of each U.S. sale; (8) for comparison to U.S. model 19A1, we incorrectly used CV data for model 19C4, instead of the data for the correct model match selection, model 20P1, and, therefore, we have amended our CV program to reflect the CV data for model 20P1; (9) we incorrectly used CV when sales of model 9C1 were not contemporaneous with the U.S. sales (according to our model-match selections, sales of models 9C2 should have been used rather than CV)—in addition, sales of model 5C1, rather than CV, should have been compared to U.S. market model 3A3—accordingly, we have amended our program for both U.S. models; (10) we adjusted packing costs for model 13C2 to reflect the actual packing costs; and (11) we corrected input errors in the exchange rate data for two sales, and one difmer data entry for model 20A3.

Comment 38: Shirasuna claims the Department used incorrect exchange rate data for conversions from yen to U.S. dollars, and from NT dollars to U.S. dollars, for nine sales in the computer programs.

Department's Position: We have closely examined the exchange rates entered into the programs and found these to be correct with two exceptions as noted above. (See discussion on clerical errors above.) As is our customary practice, the exchange rates are based upon Federal Reserve exchange rate data.

Comment 39: Shirasuna asserts that the Department made an additional clerical error by failing to match two U.S. sales of model 19A1 to sales of model 19C4.

Department's Position: As stated in our Analysis Memorandum of July 12, 1991, we did not use model 19C4 for comparison to U.S. model 19A1 because we found these models to be substantially different in elementary characteristics. Specifically, model 19C4 has a mono sound system, whereas U.S. market model 19A1 is equipped with stereo sound. Consequently, we considered model 20P1 as the most similar model for comparison to U.S. model 19A1, and applied the CV data of model 20P1 accordingly.

Comment 40: Shirasuna contends that the Department used incorrect CV figures for U.S. models 9C1, 13C2, 19C1, and 20C2.

Department's Position: We disagree. Shirasuna is incorrectly relying on the CV figures from its original response. As indicated in the Analysis Memorandum of July 12, 1991, we used the revised CV data set forth in Shirasuna's February 3, 1989 supplemental response.

Comment 41: Shirasuna contends that the Department used incorrect difmer amounts for U.S. models 9A1, 13C2, and 19C1.

Department's Position: We disagree. Again, Shirasuna is incorrectly relying on data in its original submission and not on the revised difmer figures used in our Analysis Memorandum of July 12, 1991, which takes into account both the January 30, 1989 verification report and Shirasuna's February 3, 1989 supplemental response.

Comment 42: We disagree. We have closely examined the credit expense data entered into the third-country sales program and the formula for adjustment, and we have found that the credit adjustment mirrors the amounts set forth in Shirasuna's comment. Consequently, clerical corrections are unnecessary.

Final Results of the Review

As a result of comments received, we have revised our preliminary results for Action, AOC, Hitachi, Philips, Proton, Shirasuna, and Tatung, and we determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
Action Electronics Co., Ltd.	04/01/87-03/31/88	0.00
	04/01/89-03/31/90	2.57
AOC International, Inc.	04/01/87-03/31/88	7.43
	04/01/89-03/31/90	0.12
Funai Electronic Co. Ltd.	04/01/87-03/31/88	[2] 23.89
	04/01/89-03/31/90	[1] 23.89
Fulet Electronic Industrial Co., Ltd.	04/01/87-03/31/88	0.52
Hitachi Television (Taiwan) Ltd.	04/01/87-03/31/88	23.89
	04/01/89-03/31/90	[1] 10.82
Kuang Yuan Co., Ltd.	04/01/87-03/31/88	[1] 0.00
	04/01/89-03/31/90	0.00
Nettek Corp., Ltd.	04/01/87-03/31/88	[2] 23.89
	04/01/89-03/31/90	[2] 10.82
Paramount Electronics	04/01/87-03/31/88	[2] 23.89
	04/01/89-03/31/90	[2] 10.82
Philips Electronic Industries (Taiwan), Ltd.	04/01/87-03/31/88	6.65
	04/01/89-03/31/90	[1] 10.82
RCA Taiwan, Ltd.	04/01/87-03/31/88	6.46
	04/01/89-03/31/90	1.94
Sampo Corp.	04/01/87-03/31/88	[1] 0.78
	04/01/89-03/31/90	[1] 0.78
Sanyo Electric (Taiwan) Co., Ltd.	04/01/87-03/31/88	[1] 4.66
	04/01/89-03/31/90	[1] 4.66
Shinlee Corp.	04/01/89-03/31/90	[2] 10.14
Shin-Shirasuna Electric Corp.	04/01/87-03/31/88	2.30
	04/01/89-03/31/90	[1] 10.82
Tatung Co.	04/01/87-03/31/88	0.68
	04/01/89-03/31/90	1.31
Teco Electric and Machinery Co., Ltd.	04/01/89-03/31/90	[3] 5.46

[1] No shipments during the period; rate is from the last review in which there were shipments.
[2] No response; we therefore used the best information available, which was either the highest rate among respondent firms with shipments in the relevant review, or the subject firm's most recent margin, whichever was higher.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of color television receivers, except for video monitors, from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for the above firms, except Proton, will be the most recent of the above rates. For Proton, the cash deposit rate will be 0.55 percent, the rate from the most recent completed review of Proton (Fifth Taiwan CTV Review). Since the margins for Kuang Yuan and AOC are zero and *de minimis* respectively, the Department shall not require a cash deposit of estimated antidumping duties on entries from these firms. (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporters received a company-specified rate. (3) The cash deposit rate for any future entries from all other manufacturers or exporters are not covered in this or prior administrative reviews, who are unrelated to the reviewed firms or any previous reviewed firms, will be 2.57 percent. This rate is the most current non-BIA rate for any firm in this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated December 5, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-29977 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-502]

Small Diameter Standard and Rectangular Pipe and Tube From Singapore Determination Not to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on Small Diameter Standard and Rectangular Pipe and Tube from Singapore.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On October 31, 1991 the Department of Commerce (the Department) published in the **Federal Register** (56 FR 56055) its intent to revoke the antidumping duty order on small diameter standard and

rectangular pipe and tube from Singapore (51 FR 41142), November 13, 1986.

The Department may revoke an antidumping duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. We had not received a request to conduct an administrative review of this order for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On November 18, 1991, Bull Moose Tube Company and Western Tube and Conduit, petitioners, and Maruichi American Corporation, Hannibal Industries, Searing Industries and Vest Inc., interested parties, objected to our intent to revoke this order. Therefore, we no longer intend to revoke the order.

Dated: December 6, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-29978 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 12, 1991, the Department of Commerce published the preliminary results of its 1988-89 administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan. The review covers five manufacturers/exporters of this merchandise to the United States during the period August 1, 1988, through July 31, 1989.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen Price, Joseph Hanley, or Paul McGarr, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (41 FR 34974, August 18, 1976 (the 1976 finding)) on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan, in the **Federal Register** (56 FR 14924). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are sales of tapered roller bearings (TRBs), four inches of less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review period, such merchandise was classifiable under item numbers 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers five manufacturers/exporters of TRBs during the period August 1, 1988, through July 31, 1989: Koyo Seiko Company Ltd. (Koyo), Isuzu Motors, Ltd. (Isuzu), Toyota Motor Corporation (Toyota), Nachi-Fujikoshi Corporation (Nachi), and NSK Ltd. (NSK) (formally Nippon Seiko, K.K.). At verification we found that responses submitted by Toyota and Isuzu to be deficient and unusable for the purposes of calculating an accurate dumping margin. Therefore, we assigned these companies the highest margin calculated for any other responding firm.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and one respondent, we held a hearing on June 10, 1991. We received case briefs from petitioner, Koyo, NSK, and Isuzu and rebuttal briefs from petitioner, Koyo, and NSK.

Comments are addressed in the following order:

1. General Issues
2. Annual Average Foreign Market Value, Model Match, and Cost Test Methodology
3. Calculation of Foreign Market Value
4. Calculation of U.S. Price
5. Comments Regarding Cost of Production
6. Comments Regarding the Use of Best Information Available
7. Comments Regarding Isuzu
8. Clerical Errors

Comments Regarding General Issues

Comment 1: The petitioner, The Timkin Company (Timken), argues that the Department should have included in this review all products within the scope of the finding that are admitted to a foreign trade zone (FTZ) or subzone. Timken also argues that the Department require respondents to post cash deposits in the amount of the estimated antidumping duties upon all TRBs subject to the scope of this finding admitted to FTZs.

Department's Position: We disagree with petitioner's assertion that at the time the subject merchandise was admitted into an FTZ it became subject to an antidumping review and the collection of duties regardless of whether it enters U.S. customs territory as merchandise subject to the antidumping finding. Section 751 of the Tariff Act instructs the Department to determine "the foreign market value and United States price of each *entry* of merchandise subject to the antidumping duty order", and the "amount, if any, by which the foreign market value of each *entry* exceeds the United States price of the entry." (Emphasis added.)

Under the Department's practice, at the time the merchandise subject to this review was admitted into the FTZ the merchandise was not subject to antidumping duties. As we stated in the final results of review on Antifriction Bearings from the Federal Republic of Germany, et al. (56 FR 31703, July 11, 1991) and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan (56 FR 41506, August 21, 1991), our understanding of the term "entry" in the antidumping law is that it unambiguously refers to release of merchandise into the customs territory of the United States. Importers were allowed to elect privileged or non-privileged status of TRBs admitted to FTZs. To the extent that TRBs were admitted into an FTZ in a non-privileged status and transfomed into merchandise not subject to the finding before entering U.S. customs territory, the Department currently has no basis for the assessment of antidumping duties on the merchandise.

The Department recently adopted regulations governing FTZs that address this issue, but they are effective only for merchandise entering an FTZ on or after November 7, 1991 (Foreign Trade Zones in the United States; Final Rule, 56 FR 50790 (1991)) (to be codified in 15 CFR part 400). Under these rules, items subject to an antidumping duty order must be classified as privileged on admission to the FTZ and will therefore be subject to antidumping duties on entry, even if transformed in the FTZ into goods not subject to the order. Respondents will be required to post cash deposits equal to the amount of estimated antidumping duties on all TRBs entered through FTZs (however transformed) on or after November 7, 1991.

Comment 2: Timken argues that the Department should include the Japanese consumption tax in foreign market value (FMV) and make a corresponding upward adjustment to U.S. price. Timken asserts that according to the statute and judicial precedent (*Zenith Electronics Corp.* v. *United States*, 10 CIT at 276, (1986)), the Department may not make an adjustment for consumption taxes forgiven on exports by simply deducting the tax from FMV. Rather, Timken argues, an upward adjustment in the amount of the tax must be made to U.S. price.

Department's Position: We have added an imputed consumption tax to the U.S. price according to section 772(d)(1)(C) of the Tariff Act. Because the statute directs us to adjust for home market consumption taxes through an addition to U.S. price, we generally used tax-inclusive prices in each market to calculate a dumping margin. No consumption tax was added to the U.S. price when the FMV was based on constructed value, because section 773(e) of the Tariff Act does not provide for the inclusion of any tax in constructed value (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings and Parts thereof from the Federal Republic of Germany, et al. (56 FR 31729, July 11, 1991)).

We calculated the addition to U.S. price by applying the home market tax rate to the net U.S. price after all other adjustments were made. This "ex factory" tax basis for U.S. price is the best information available because the home market sales were reported net of the consumption tax. In order to ensure a tax-neutral absolute margin, we made a circumstance of sale adjustment to FMV to offset any difference in the home market and U.S. tax.

Comment 3: Timken asserts that the Department should presume that home market selling expenses are indirect and that U.S. selling expenses are direct, absent proof to the contrary. Timken argues that this reasoning was upheld in *Timken* v. *United States*, 673 F. Supp. 495 (CIT 1987) (Timken II), when the Court of International Trade (CIT) recognized that respondents benefit when selling expenses are classified as direct in the home market and indirect in the United States. Timken contends that, since respondents possess the information necessary to support the claim, the burden is placed on them to prove that U.S. selling expenses are indirect and home market selling expenses are direct.

Timken cites NSK's failure to tie its home market rebates, discounts, and commissions directly to the sale of the subject merchandise as an example of a respondent's inadequate proof that an expense is direct in the home market. Timken maintains that the Department correctly classified these adjustments as indirect.

Department's Position: Timken is correct in its assertion that the burden is placed on the respondent to prove that U.S. selling expenses are indirect and home market selling expenses are direct. We classify expenses in each market based on the information submitted during the review and on the Department's verification reports. In instances were a respondent fails to provide sufficient information to support its claim that an adjustment is directly related to a sale in the home market, we will generally reclassify the adjustment as indirect. Likewise, when a respondent fails to provide information to support its claim that an adjustment is indirect in the U.S. market, we generally reclassify the adjustment as direct.

For the final results, where NSK failed to tie rebates, discounts and commissions directly to a sale, the Department again classified these as indirect adjustments (see our response to comment 21).

Comment 4: Koyo argues that it is not liable for interest on antidumping duties that are assessed on entries of TRBs where Koyo has not been ordered to make cash deposits on such entries.

Department's Position: We agree. The only statutory authorization for assessing or paying interest on underpayments or overpayments of amounts deposited for antidumping duties is section 737(b), which provides that if the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference shall be (1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or (2) refunded, the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778. The amount of estimated antidumping duty deposited referred to in section 736(a)(3) is only a cash deposit, not a bond. See also, 19 CFR 353.24. Cash deposits were first required on entries of this merchandise manufactured by Koyo and NSK on June 1, 1990. Consequently, interest will only be collected or refunded on under- or overpayments of cash deposits on entries after that date. The Department's interpretation has been upheld by the CIT (*Timken* v. *United States*, Slip. Op. 91–95, October 25, 1991).

Comment 5: Koyo requests that, in light of the clerical errors noted after the issuance of the preliminary results, the Department release the computer program used in TRB proceedings for review by interested parties prior to issuing the final results. Koyo notes that the Department released the computer program used in the antifriction bearings (AFB) proceeding before issuing the final results, Koyo argues that the Department's current practice of releasing the computer programs after the final results are issued makes it impossible for errors to be identified and corrected before litigation challenging the results must be commenced in the CIT. The result, according to Koyo, is that a respondent may be required to provide estimated duty deposits on the basis of final results that contain clerical errors.

Department's Position: We disagree that it is impossible for the parties to identify clerical errors and provide meaningful comment on the computer program if they do not have access to the calculations prior to the issuance of the final results of review. All parties obtain access to the Department's program when the preliminary results are issued, and are provided the opportunity to comment on any clerical errors at that point in the proceeding. Unlike the AFB proceeding, where the Department had concluded only its first administrative review when it released the computer programs prior to the issuance of final results, the TRB proceeding's lengthy history has afforded the Department the opportunity to refine its program and calculate the final results with few, if any, errors. Indeed, Koyo noted only four clerical errors after the preliminary results were issued in this review. No clerical errors

were noted by Koyo following the issuance of the final results in the 1987–88 review immediately preceding this one. Further, the Department's regulations provide parties an opportunity to request disclosure after issuance of final results and to identify and comment on any clerical errors in the calculations (19 CFR 353.28).

Comment 6: Koyo and NSK argue that the Department should terminate the 1987–88 review. They assert that the Department was able to initiate this proceeding only because the Department acted in an improper fashion in conducting its review of the 1974–79(80) period. Koyo and NSK believe that the margins for those years should have been zero or *de minimis*. Had the Department completed its earlier review, the finding would have been revoked with respect to Koyo and NSK, and their shipments during the 1988–89 period would not have been subject to review. If the present review is not terminated, it should be discontinued until final disposition of the 1974–79(80) review.

Department's Position: Koyo and NSK are raising issues which are relevant to a different segment of the proceeding, and we have addressed those issues in our final results of review for the 1974–79(80) period, published June 1, 1990, in the Federal Register. The issues in those final results are not pertinent to this segment of the proceeding. Judicial proceedings for the 1974–79(80) segment are underway. Based on our final results of review for the 1974–79(80), 1986–87, and 1987–88 periods, the Department is required to proceed with subsequent administrative reviews.

Comments Regarding Annual Averaging of Foreign Market Value, Model Match, and Cost Test Methodologies

Comment 7: Koyo argues that Section 777A of the Tariff Act authorizes the Department to use averaging techniques to establish U.S. price and FMV only when such averaging techniques yield fair and representative results. Koyo believes that, regardless of whether an annual weighted-average FMV is as representative of home market prices as a monthly weighted-average FMV, the Department has failed to demonstrate that its use leads to margin calculations which are representative.

Koyo further submits that the Department's claim that the annual weighted-average FMV is as representative as the monthly weighted-average FMV is flawed. Koyo believes that the Department's determination that 98 percent of the home market sales have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price is insufficient grounds for using an annual weighted-average FMV. Koyo believes that a 10-percent variance can have a dramatic, distortional effect on the margin calculation because it can increase the margin by as much as 10 percent, and produce findings of dumping where no dumping occurred. Koyo believes that this problem is further exacerbated by the Department's practice of not crediting respondents with negative dumping margins on sales made in the United States at prices above those in the home market.

Koyo asserts that, since the Department has already gone to the effort of calculating a monthly weighted-average FMV, it should use the monthly FMV in its margin calculations since it is a more contemporaneous match than an annual weighted-average FMV. Alternatively, Koyo argues, the Department should compare an annual weighted-average U.S. price to the annual weighted-average FMV to insure an apples-to-apples comparison. At the least, Koyo believes that a monthly weighted-average FMV should be used in instances where the annual weighted-average price deviates from the monthly weighted-average price by more than 10 percent.

Finally, Koyo argues that the Department's decision to replace the monthly weighted-average FMV with an annual weighted-average FMV without notifying Koyo is contrary to the purpose of U.S. antidumping law. Koyo asserts that the methodology used by the Department to calculate FMV must be predictable to allow the foreign manufacturers the opportunity to adjust their pricing policies.

Department's Position: Section 777A of the Tariff Act requires the Department to ensure that samples and averages shall be representative of the transactions under review. Therefore, before adopting the use of an annual weighted-average FMV, we conducted two studies on prices to ensure that the transactions and, thus, the results produced would be representative. First, we compared the monthly weighted-average price to the annual weighted-average price. We found that the annual weighted-average price for more than 90 percent of the products sold was within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time. That is, prices did not consistently rise or fall so as to make annual weighted-average prices unrepresentative of home market prices.

Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV. We are satisfied that, if the weighted-average FMV is representative of the home market prices for the period of review, then the margins calculated using the weighted-average prices are accurate.

We disagree with Koyo's assertion that the Department's determination that 98 percent of the home market sales have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price is insufficient grounds for using an annual weighted-average FMV. All averaging techniques, whether they are monthly or annual, result in variances between the actual price and the average price. The fact that over 90 percent of the annual weighted-average prices fall within 10 percent of the monthly weighted-average prices demonstrates that the variances produced by using an annual weighted-average FMV do not differ significantly from the variances produced by using a monthly weighted-average FMV. Furthermore, Koyo offers no evidence that an annual weighted-average FMV results in a systematic bias that would create higher dumping margins than would result from using a monthly weighted-average FMV.

Also, we disagree with Koyo's assertions that, to insure representative results, we must average U.S. prices on the same basis as FMV, or that we must credit respondents with negative dumping margins. Both cases have been, and continue to be, unacceptable, because they would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. That is, a foreign producer could sell half its merchandise in the U.S. at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin. The Department does not encourage selective dumping, nor do we reward a party for not dumping. Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Columbia (55 FR 20495, May 17, 1990)), the idea of averaging U.S. prices has been rejected (Final Results of Antidumping Administrative Review,

Pressure Sensitive Plastic Tape from Italy (54 FR 13091, March 30, 1989)). Since the merchandise under review is not a perishable product, and our tests of home market sales revealed that there are no significant price fluctuations, there is no reason to believe that averaging of U.S. prices is needed to account for very significant price fluctuations.

The Department notes that the use of an annual weighted-average FMV in calculating margins dramatically simplifies the analysis in this review. Koyo's presumption that we have already 'gone to the effort' to calculate an annual weighted-average FMV at the onset of our analysis and, therefore, have completed the complicated calculations, is mistaken. At the onset of our analysis, we compare annual prices, not FMVs, to monthly prices, not FMVs, for representativeness. Upon finding that the annual price is representative, we then calculate an annual weighted-average FMV for a model. Since we have confirmed that price variations are not correlated with time, there is no contemporaneity issue. The fact that we do not have to make multiple searches for contemporaneous matches results in a dramatic simplification of our analysis, while maintaining the integrity of the representative FMV.

We disagree with Koyo's assertion that our change in methodology has removed predictability from the process. Since such a high percentage of the sales have an annual weighted-average price which falls within ten percent of the monthly weighted-average price, the calculation of an annual weighted-average FMV, which the Department has used in this review, is no less predictable than the calculation of a monthly weighted-average FMV.

Comment 8: Koyo asserts that the Department's model match methodology is flawed because it does not use a cap on the permissible difference between the home market model and the U.S. model for each of the five criteria used to determine similar merchandise. Koyo believes that without a ten percent cap on the five physical characteristics criteria, dissimilar home market merchandise will be compared to U.S. models.

Department's Position: We disagree that our decision not to apply a ten percent criterion cap results in the comparison of models which do not constitute similar merchandise. We have based the determination of physical similarity on the smallest sum of the deviations of the five physical criteria. Consistent with section 771(16) of the statute, we determined that all TRBs are alike in the purposes for which they are used (*i.e.* to reduce friction) and we eliminated models that are not of equal commercial value. There is no further requirement that home market models must be technically substitutable, purchased by the same type of customer, or have the same end use as the U.S. model.

Throughout the extended history of the two TRB proceedings, the Department requested input by interested parties and evolved the use of these five physical criteria to identify and compare models sold in the U.S. and the home market. We are aware that these five characteristics are not substitutes for the technical specifications of the products under review, since TRB product manuals list more than 25 statistics for each bearing. However, we have determined that, for the purposes of selecting similar merchandise in a dumping calculation, these five criteria are the pertinent data to be collected and analyzed.

Comment 9: Timken argues that the model match methodology used in this proceeding is inconsistent with the methodology the Department used in the final determination of sales at less than fair value on Tapered Roller Bearings Over Four Inches from Japan (52 FR 30700, August 17, 1987) (the 1987 LTFV determination). In the 1987 LTFV determination, the Department used the greatest single deviation methodology, in which the largest difference in a single criterion is measured, to determine comparison merchandise. The greatest single deviation methodology measures the percentage difference between each of the five physical characteristics of the home market model and the target U.S. model. It identifies the largest percentage difference for each home market model without taking into account the characteristic that produced the deviation. This largest deviation is known as the "greatest single deviation." It then ranks all the models sold in the home market in comparison to the target U.S. model from the smallest to the largest single deviation. Therefore, the most similar model is the model whose greatest single deviation is smaller than the greatest single deviation of any other model sold in the home market. In this and previous reviews of the 1976 finding (55 FR 22369, June 1, 1990; 55 FR 38721, September 20, 1990; 56 FR 26054, June 6, 1991), the Department used the "sum of the deviations" methodology, in which the sum of the differences in U.S. and home market model criteria is measured. Timken asserts that the greatest single deviation methodology is supported by evidence on the record, and can be implemented using the same information the Department collected for the sum of the deviations methodology. Timken addresses a number of additional issues in its argument to have the Department adopt the greatest single deviation methodology in this proceeding.

First, Timken argues that the Department incorrectly concluded that the greatest single deviation methodology unreasonably emphasizes any one of the five criteria when choosing comparable merchandise. Timken notes that changes in any four of the five criteria used to select similar merchandise result in exponential, rather than linear, changes in a bearing's performance characteristics. Thus, Timken believes that the greatest single deviation methodology is sufficient to produce the most similar match. Additionally, Timken contends that when choosing which bearing to purchase, a customer evaluates each criterion independently to ensure that its application requirements will be met. In this same manner, Timken argues, the Department must also evaluate each criterion independently when selecting similar merchandise, thereby remaining consistent with actual commercial considerations.

Second, Timken asserts that the Department does not need to use a ten percent cap on the deviation of each factor in order to adopt the greatest single deviation methodology. Without such a limit, Timken argues, just as many home market matches will be found with the greatest single deviation methodology as with the sum of the deviations methodology.

Finally, Timken contends that the Department should not reject the greatest single deviation methodology on the grounds that it fails to provide a mechanism for distinguishing between two potential matches when the greatest single deviation is the same. Timken believes that in these situations the Department should examine the next greatest deviating factor, exhausting all the criteria if need be, until a most similar match is found. If two or more bearings are equally similar after all the criteria are exhausted, Timken proposes that the Department use the weighted-average price of all the home market sales of the remaining equally similar choices as the basis for FMV.

Department's Position: In the 1987 LTFV determination, the Department used five criteria to match models employing the greatest single deviation methodology. In this review of the 1976 finding, we also used the five criteria to match models; however, we continued to employ the sum of the deviations

methodology, which was confirmed in litigation on final results for other parties covered by the 1976 finding (*Timken* v. *United States*, Slip. Op 84–63 (7 CIT 319) (June 5, 1984) (*Timken*), (*Timken* v. *United States*, 630 F. Supp. 1327 (CIT 1986 (*Timken I*), and *Timken II*.

Because of concerns expressed by petitioner and respondents involving the use of the two methodologies, the Department extensively reevaluated the selection methodology. We requested input by parties to the proceeding and a TRB manufacturer subject only to the antidumping duty order on TRBs over four inches and parts thereof from Japan. Timken favored the greatest single deviation method, two respondents had no preference, and one respondent favored the sum of the deviations method.

The sum of the deviations method seeks the model with the lowest overall deviation for all criteria combined, while the greatest single deviation method seeks the model for which the greatest deviation for any single criterion is the lowest. While Timken is correct in asserting that the same information collected by the Department can be used to conduct the model match using either methodology, the Department believes the sum of the deviations method is preferable because it uses all five criteria in determining which home market model is the most similar. The greatest single deviation method relies on only one criterion, to the exclusion of all other criteria. In this way, the model match selection using the greatest single deviation relies on a single arbitrary criterion, since the criterion that produces the largest single deviation changes from one match to another for the same U.S. model.

Although Timken asserts that customers choose a bearing by a single criterion, Timken does not specify which criterion is the controlling factor. The criterion that may be important for one customer may be different from what is important to another.

There is no evidence that any particular single criterion should be the deciding factor, or that all customers would rely on the same single criterion in deciding which model to purchase. Therefore, even if customer preference were a factor in the determination of the most similar model, the greatest single deviation method does not address the issue of customer preference.

Timken's contention that the non-linear relationships between the criteria and the performance characteristics make it unnecessary to analyze the four criteria that do not have the largest deviation, is not supported by the facts. The record shows that the parties to this proceeding have agreed that all five criteria are important factors to use when determining the similarity of merchandise. In addition, our analysis indicates that one must analyze the differences in all criteria in order to determine the most similar home market match.

Furthermore, the Department cannot select models based on performance expectations, whether those expectations are redundant, proportional, linear, or non-linear, since expectations are not subject to objective analysis. Since the greatest single deviation methodology ignores the relative value of four out of five criteria, it does not take all of the objective factors into account in selecting the most similar match.

Although Timken asserts that the removal of the ten percent cap in the greatest single deviation methodology would result in the selection of as many home market matches as the sum of the deviations methodology, this was not a critical issue in the decision-making process. We chose to continue to use the sum of the deviations methodology in this proceeding because, as explained above, it provides for the most comprehensive analytical approach in choosing the most similar merchandise sold in the home market.

Finally, while we realize that Timken has provided a method of breaking a tie among two or more matches with the same greatest single deviation from the reference bearing, this does not alter the Department's analysis or conclusion. Because the sum of the deviations method uses all five criteria, instead of a single criterion, it is more discriminating and, therefore, less likely to produce ties in the selection of the most similar merchandise sold in the home market.

Comment 10: Koyo argues that the Department did not properly test home market sales made at prices below cost of production (COP) to determine if they were made over an extended period of time. Koyo asserts that the Department's definition of an extended period of time as three months or more of the review period is unreasonable and contrary to the statute. Koyo submits that a model is sold below COP for an extended period of time only when below-cost sales of that model occur during each month of the review period.

Department's Position: We disagree. Section 773(b)(1) of the Tariff Act is designed to ensure that below-cost sales are not disregarded if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of-year merchandise at below-cost prices. TRBs are a commodity item that do not demonstrate perishability, seasonality, or frequent generational changes in models. No information on the record in this case indicates that below-cost sales are a normal practice or characteristic in this industry. We used the period of three months to define an extended period of time since three months is commonly used to measure corporate, financial, and economic performance. Use of three month periods to measure the distribution of below-cost sales demonstrates that sales below the COP are not random, accidental, or sporadic. Therefore, we have determined below-cost sales occurring in three or more months of the review period to have been made over an extended period of time.

Comments Regarding Calculation of Foreign Market Value

Comment 11: Timken asserts that, in at least one case, Koyo classified certain sales to an original equipment manufacturer (OEM) as aftermarket (AM) sales. Timken contends that Koyo should not be allowed to classify sales to OEM customers as AM sales even though those sales are intended to supply the customer's service or replacement business. Timken argues that the level of trade is determined by whether the first unrelated customer is itself an end-user or a reseller (distributor), and that the customer's customer is not relevant to a level of trade classification.

Department's Position: We agree with Timken that the customer's customer is not relevant to a level of trade classification. However, we also recognize the fact that some OEM customers also act as distributors and therefore purchase bearings in both markets. The classification of a sale as OEM or AM indicates the market in which the sale took place. The fact that a customer is an OEM, and purchases the majority of its bearings in the OEM market, does not preclude it from purchasing bearings in the AM for replacement parts, resale, or distribution. Therefore, we accepted Koyo's level of trade classification.

Comment 12: Timken alleges that Koyo's home market sales listing is incomplete since Koyo did not submit transaction-specific data on sample sales. Timken argues that, even if Koyo considers sample sales as being outside the ordinary course of trade, it must still provide the sales data in order to allow the Department to determine if such sales are indeed outside the ordinary course of trade. Timken asserts that the Department should reject the response

and use the highest rate for another company or the rate from the previous review as the best information available.

Department's Position: During verification of Koyo's home market sales response, we examined the volume and value of covered merchandise sold in the home market and found the amount of sample sales to be insignificant for this review. Therefore, we did not require Koyo to submit data for these sales.

Comment 13: Timken asserts that NSK's response should be rejected as substantially incomplete for two reasons: (1) NSK unilaterally chose to exclude combination bearings, bearings with additional features, and precision bearings from its home market sales list; and (2) NSK excluded sales of certain other models from its home market list, because it considered them "not to have been sold in the usual commercial quantities or in the ordinary course of trade". The Department verified that all but two of these same sales were commercial transactions in which premium prices were paid. Timken argues that the Department should determine what constitutes the most similar merchandise and that, for the purpose of the final results, the Department should include all aforementioned home market sales in its calculation of FMV.

Department's Position: We agree with the petitioner that the Department should determine what constitutes similar merchandise, either by directly analyzing the entire class or kind of merchandise or through instructions to the respondents. During verification, the Department examined NSK's catalogue and blueprints and determined that combination bearings, bearings with additional features, and precision bearings were too dissimilar to match a bearing sold in the U.S. (Verification Report, November 27, 1990, p. 5). Therefore, we are satisfied that the exclusion of these bearings did not alter the results of the model match.

NSK excluded transactions of 27 models sold as "outside the ordinary course of trade", of which the Department verified that 22 models were prototypes and one model was another manufacturer's bearing. Based on verification, we are satisfied that NSK properly excluded these sales. The remaining models involved sales with premium prices. In this review, such sales constitute an insignificant percentage of NSK's home market sales.

Comment 14: Timken asserts that, if Koyo and NSK fail to show that sales to related parties were made at arm's-length prices, the Department must analyze related party sales and determine whether the transactions were at valid, arm's-length prices prior to using related party sales in the final results.

Department's Position: Koyo and NSK's home market sales data revealed that prices to related customers were at arm's length, since, on average, they were higher than prices to unrelated customers. Therefore, pursuant to 19 CFR 353.45(a), we included Koyo's and NSK's sales to related parties in our pool of home market sales.

Comment 15: Timken argues that Koyo and NSK reported their foreign inland freight adjustment inaccurately, and that the Department should either recalculate or disallow this adjustment as a direct expense.

Timken argues that Koyo's adjustment is inaccurate because it commingles freight expenses incurred to move the product to related warehouses or distribution centers with freight costs incurred to ship the merchandise to its customers. Timken asserts that freight costs incurred to ship the merchandise to related warehouses or distribution centers is not allowable as a direct adjustment to price and, therefore, should be excluded. Timken also believes that the freight cost should not be calculated on the basis of sales value, since the value of the merchandise bears no relationship to the cost to ship it.

Timken asserts that, because NSK approximated freight expenses attributable to pre-sale transportation and because NSK could not directly isolate post-sale freight expenses in its accounting records, the Department should decline to make any adjustment for freight expenses attributable to shipment to distribution centers and should treat the remainder of NSK's freight expense as an indirect selling expense. Also, Timken argues that since the Department verified that NSK's freight expense had items other than freight included in its total, the Department should exclude all non-freight costs from NSK's home market inland freight expense.

Department's Position: 19 U.S.C. 1677a(d)(2)(A) of the Tariff Act and 19 CFR 353.41(d)(2)(i) require the Department to deduct all inland freight expenses incurred on U.S. sales in order to establish the ex-factory price for sales comparison purposes. There is no explicit provision for deducting home market inland freight expenses from FMV. The Department previously attempted to adjust FMV for home market inland freight expenses under the circumstances of sale adjustment in 19 U.S.C. 1677b(a)(4)(B). In accordance with these provisions, however, the Department attempted to limit any adjustments to expenses that were incurred as a direct result of sales under investigation. Consequently, the Department often encountered situations where it was unable to grant respondents' claims for pre-sale inland freight expenses because respondents were unable to meet this requirement. This approach leads to unfair sales comparisons and undesirable results. By denying an adjustment for pre-sale inland freight expenses to home market price, the Department essentially would compare an ex-factory price in the United States to an ex-warehouse price in the home market. By deducting pre-sale inland freight expenses on the home market side from FMV, the Department is able to compare U.S. ex-factory prices with their counterpart in the home market.

Therefore, it is irrelevant that Koyo or NSK may have commingled pre-sale and post-sale freight expenses in their responses since we deducted all movement expenses from FMV in the same manner. (Final Determination of Sales at Less than Fair Value, Gray Portland Cement and Clinker from Mexico (55 FR 29244, July 18, 1990), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 26054, June 6, 1991)).

Since Koyo does not incur its home market freight expense on the basis of weight shipped, Koyo's methodology of allocating this expense on the basis of sales value is acceptable. Additionally, there is no evidence on the record to indicate that Koyo's allocation methodology results in an adjustment to FMV that is unrepresentative of the freight expenses incurred during the period of review. Therefore, we continue to accept it for the purpose of calculating these final results (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan (55 FR 38722, September 20, 1990), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 26054, June 6, 1991), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan (56 FR 41506, August 21, 1991)).

Also, the "non-freight costs" alluded to by Timken, which were included in NSK's home market inland freight expenses were verified as fuel costs. Since we are satisfied that these fuel costs constitute an appropriate part of the freight expense for NSK (*i.e.*, if NSK did not supply the fuel, it would have been charged for fuel by its trucking service), we have included fuel costs in the calculation of home market freight expense for these final results.

Comment 16: NSK asserts that the Department should have included freight-related fuel expenses, and excluded a year-end freight adjustment, in the calculation of home market inland freight. NSK maintains that the fuel costs were spent in connection with moving the goods to customers and, thus, are clearly related to the freight itself, while the year-end credit was an offset to other pre-sale debit adjustments which were excluded from the Department's calculation on the theory that they were not verified as post-sale freight. The year-end credit, therefore, should not be included in the calculation since it offsets expenses which were excluded.

Department's Position: We agree that the fuel costs incurred by NSK in connection with shipping goods to customers are a legitimate freight expense, and, thus, have included these costs in our calculation of the inland freight expense for these final results. Also, because the Department does not distinguish between pre-sale and post-sale movement charges when calculating an ex-factory price, we have deducted all movement charges, including the offset to pre-sale debits, from FMV (see our response to comment 15).

Comment 17: Timken argues that the Department should not accept Koyo's methodology for calculating home market credit expenses. Timken asserts that Koyo's calculation methodology is arbitrary because it uses a random number of customers to calculate an average credit period. Additionally, Timken believes that because payment is based on a month's total bills, the credit rate may not accurately reflect the credit terms of the covered merchandise, since the credit rate includes payment on products outside the scope of the finding. Timken argues that the Department should either deny the adjustment altogether, or recalculate the adjustment using the shortest payment term reported for any major customer as the best information available.

Department's Position: We disagree. We view the number of customers Kovo chose to use in its credit calculation as acceptable since it accounts for the vast majority of its home market sales of covered merchandise during the period of review. While the Department prefers that respondents report credit expenses on a sales-specific basis, we recognize the massive number of transactions in this review, and consider calculations based on average credit days outstanding on a customer-specific basis to be reasonable (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings from the Federal Republic of Germany, et al. (56 FR 31721, July 11, 1991)). Furthermore, we verified that the information provided in the response is based on the average credit days outstanding on a customer-specific basis, and thereby takes into account the different actual payment periods extended to different customers.

Comment 18: Timken argues that the Department should not allow a direct adjustment for warranty expenses incurred in the home market. Timken contends that, since the adjustment to the home market price is based on warranty expenses for all bearing products sold in the home market, not just within-scope merchandise, it cannot be classified as a directly-related selling expense. Timken asserts that the Department should either deny the adjustment or reclassify it as an indirect selling expense.

Department's Position: We agree. Since Koyo's warranty expenses could not be directly related to merchandise covered by the scope of the finding, we have reclassified warranty expenses incurred in the home market as an indirect selling expense for the final results.

Comment 19: Timken contends that Koyo's ESP offset claim is inflated by the inclusion of general and administrative expenses. Timken argues that Koyo's reporting of selling, general, and administrative (SC&A) expenses fails to link the expenses to the sales function in the home market. Timken asks that the Department reexamine this issue to insure that Koyo properly segregated general and administrative expenses, and otherwise accurately reported indirect selling expenses.

Department's Position: We verified Koyo's reported ESP offset claim, and we are satisified that the adjustment used for the preliminary results accurately reflects the indirect selling expenses incurred by Koyo in the home market. Accordingly, we have made no change for the final results.

Comment 20: Timken argues that the Department should deny Koyo's claimed adjustment for post-sale price adjustments and rebates incurred in the home market. Timken cites two reasons in its argument for denying the claimed adjustment. First, Timken contends that, since the rebates reported to the Department were not directly related to particular sales, and the terms of the rebates were not known prior to the date of sale, they should not be permitted as a circumstance of sale adjustment. Second Timken asserts that, since it is not apparent that Koyo's allocation methodology results in the reporting of rebates and post-sale price adjustments that are specific to sales of in-scope TRBs, the Department should not even allow the adjustment as an indirect selling expense. Timken argues that, if Koyo is unable to tie the rebates and price adjustments to the specific transactions to which they applied, no adjustment to the home market price is warranted.

Koyo argues that the Department should not have reclassified home market rebates and post-sale price adjustments as indirect selling expenses. Koyo believes that, since rebates were allocated only to the customers who received them, and the rebate percentages were set prior to the sale and applied to all merchandise sold, the rebates should be considered directly related to Koyo's sales. Koyo argues that this should be enough to justify a direct adjustment to price since, under *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1580 (CAFC 1983), a circumstance of sale adjustment need only have a "reasonably direct relationship" to the sales under consideration.

Koyo asserts that, since price adjustments are revisions to price and not circumstances of sale adjustments, there is no requirement to establish that price revisions are related to specific transactions. Koyo argues that the Department must recognize that prices are established based on factors that cross product lines and include many individual transactions, and not penalize Koyo because its accounting practices do not allocate price adjustments to individual transactions.

Department's Position: We disagree in part with both the petitioner and the respondent. The record demonstrates that Koyo's post-sale price adjustments are an established and accepted commercial practice in the TRB industry (Final Results) of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 26054, June 6, 1991)). We have verified that these price adjustments were made on a customer-specific basis. However, since Koyo has allocated its post-sale price adjustments on a customer-specific basis over both

scope and non-scope merchandise, we have classified these post-sale price adjustments as indirect, rather than direct expenses.

Koyo's rebate adjustment, unlike the post-sale price adjustments, is based on a set rebate percentage which applied to all merchandise sold to a customer. Under normal circumstances, this would qualify as a direct adjustment to the home market price since the terms of the rebate remain consistent with across the sale of all products. However, we were unable to make the direct adjustment since Koyo neglected to follow the Department's directions, as stated in its supplemental questionnaire, and separate rebates from the other post-sale price adjustments reported on the computer tape. Therefore, for the final results, we classified rebates as indirect expenses along with post-sale price adjustments.

Comment 21: NSK contends that the Department's treatment of rebates, discounts, and commissions as indirect selling expenses is contrary to law and past Department practice. Specifically, NSK argues that it had two types of price adjustments that were classified as rebates: a post-sale price adjustment and a lump-sum post-sale price adjustment. NSK maintains that the post-sale price adjustment was granted by NSK, and reported to the Department, on a customer-specific and product-specific basis, and, therefore, is directly related to the sales of the subject merchandise. The lump-sum sales adjustment was recorded by NSK on a customer-specific basis, but not on a product-specific basis, because the lump-sum applied to a range of products sold over a period of time. NSK allocated the adjustment on a customer-specific basis over total sales of all products to that customer during the period of review. NSK asserts that rebates reported by bearing manufacturers on a customer-specific basis, according to a consistent and reasonable allocation method, have been treated as a direct expense by the Department, and the Department should not depart from its precedent (Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19056). Also, NSK insists that, as with lump-sum rebates, discounts and commissions should be treated as a direct expense since they were allocated appropriately on a customer-specific basis; total discounts or commissions to each distributor were divided by total sales to each distributor, as neither amount was recorded by product.

Department's Position: NSK did not allocate its rebates according to the methodology it reported in its narratives and case brief. In its computer submission, NSK combined the two types of rebates into one variable and allocated the adjustment according to level of trade; the rebate adjustment was not allocated on a customer-specific basis. We have no basis to assume that all customers in each level of trade received the same amount of rebate. Because these rebates were not related directly to the sale or the customer, the Department could only evaluate them as having an indirect relationship to sales of all customers. Thus, we classified rebates as an indirect adjustment.

NSK reported three types of discounts and three types of commissions, all on a customer-specific basis. Because two types of discounts (the performance incentive discounts) were granted to the customer as a set percentage of each sale, we have determined that these discounts are directly related to each sale. Thus, performance incentive discounts are direct adjustments to the home market price since the terms of the discounts remain consistent across all customer-specific sales. However, as the terms of the remaining discount program (the early payment discount) and the commissions are not consistent across all sales and were reported to the Department as a set percentage of each sale, we have determined that the allocation methodology does not directly tie this discount and these commissions to the sale. Therefore, we have reclassified these expenses as indirect selling expenses for the final results of review.

Comment 22: Koyo argues that the Department should not include home market commissions with home market indirect selling expenses, and thus subject them to the ESP cap, when commissions were granted in the home market but not the U.S. market. Koyo, referring to 19 CFR 353.56(b), asserts that, when reviewing ESP sales, the Department should treat commissions as direct circumstance of sale adjustments.

Department's position: We agree with Koyo that, in the preliminary results, the ESP offset was inappropriately calculated in the instances in which a commission existed in one market and not the other. Therefore, we have changed our calculation to provide for a separate calculation of the circumstance of sale adjustment for commissions and the ESP offset (see Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Mexico (56 FR 1794, January 17, 1991)).

Comment 23: Koyo argues that the Department should make the changes it requested in its letter of January 11, 1991, to nine of the commission rates used in the margin calculations. Koyo notes that the Department changed two commission rates for the preliminary results due to calculation errors committed by Koyo and revealed when a random selection of commission rates was examined at the verification. Koyo believes that, since the same calculation errors were committed on the nine new commission rates, and all the underlying data have already been verified, the Department is obligated to use the additional nine new commission rates for the final margin calculations.

Department's Position: We disagree. The adjustments to the two commission rates were the result of calculation errors revealed during the verification of commission expenses in the home market. We corrected these two rates for the preliminary results and continue to use the two corrected rates for these final results. We view the submission of additional unverified allegations of error in the commission rates as untimely since it was made after verification of the response was completed.

Comments Regarding Calculation of U.S. Price

Comment 24: Timken argues that the Department should include in the U.S. sales listing all sample sales, and all sales of sets that incorporate one finished component (cup or cone) produced in Japan.

Department's Position: Consistent with the preliminary results we have included in our U.S. sales listing all sample sales and sales of sets that incorporate one finished component produced in Japan.

Comment 25: Timken objects to the allocation methodology which both NSK and Koyo used to calculate their U.S. technical service expenses. Timken claims that the allocation of these expenses over total sales value over-allocates technical service expenses to higher-priced sales to distributors, who seldom require such services. Timken proposes that the Department re-allocate U.S. technical service expenses to OEM sales, and deduct them as a direct selling expense. Also, Timken maintains that NSK's technical service expenses in the U.S. are understated by an amount reimbursed to the U.S. subsidiary by the Japanese parent for testing and analysis performed in Japan.

Department's Position: Both Koyo and NSK have stated that they provide

technical services to all customers that request assistance, including aftermarket customers. Therefore, we are satisfied that NSK's and Koyo's allocation methodology for technical services expense is reasonable.

Since the adjustment to NSK's technical service expense for the reimbursement by the parent company is substantially less than 1 percent, in accordance with section 777A(a)(2) of the statute, we have not made the adjustment for U.S. sales.

Comment 26: Timken argues that the methodology Koyo uses to report its U.S. duty expense yields only an approximation of the actual duty paid on each entry of the subject merchandise. Timken contends that the Department should calculate a duty expense using the reported CIF value of each entry less ocean freight and marine insurance charges.

Department's Position: We disagree. Since Koyo's recordkeeping allows it to itemize the duty expense for each entry by subtracting the CIF value from the landed value, we believe that it is not unreasonable to accept the actual figure reported rather that calculate a new adjustment for duty expenses. We examined a sample of Koyo's reported adjustment to U.S. price for duty expenses and found that the amount is not less than the duty expense of the CIF value.

Comment 27: Timken argues that the Department should not reclassify Koyo's U.S. adjustment for rebates and other post-sale price adjustments as indirect selling expenses simply because Koyo did not provide the information necessary to tie them to individual sales. Timken contends that the Department should use the highest rebate rate observed among all U.S. sales as the best information available when calculating the final results.

Timken also objects to the upward adjustment to U.S. price due to the occurrence of a credit balance in the allowance accounts of certain customers. Timken believes that such an adjustment is unwarranted since it is the result of an allowance claimed previously by a customer but disallowed by Koyo. Therefore, Timken contends, the balance relates to previous sales and not to the sale at issue. Timken asserts that the balance does not reflect an adjustment to price, since it is not apparent that the transaction price is affected by Koyo's refusal to permit the customer's claim.

Department's Position: Consistent with our response to Comment 20, we have classified discounts and rebates as indirect expenses since we have no evidence that such discounts and rebates are tied directly to Koyo's sales of covered merchandise. Therefore, we have not changed our calculations for the final results of review. In addition, we recognize that Koyo's reported expense experience is based on a snapshot of its accounts for the twelve-month period of review. This is unavoidable since to do otherwise would result in constant adjustments to prices after a review is completed. Therefore, we do not find it unreasonable to accept an upward adjustment to U.S. price in instances where a credit balance exists in the account of certain customers.

Comment 28: Timken argues that the Department should reject Koyo's methodology for calculating U.S. credit expenses. Timken asserts that the average credit days methodology, based on the average accounts receivables, is inconsistent and self-serving, since the number of customers used in the calculation changes depending upon the market and the review period. Timken contends that, unless Koyo's credit costs are based on actual payment days for each individual sale, the Department should use the highest credit period of any major customer as the best information available when calculating the final results.

Department's Position: We disagree. Please refer to our response to Comment 17 for an explanation of our position on Koyo's credit calculation methodology.

Comment 29: Timken argues that, since NSK did not support its claim that it incurred no "customer-directed" advertising expenses in the U.S. market, and since selling expenses in the U.S. are presumed to be direct absent proof to the contrary, NSK's corporate advertising expenses should be deducted from U.S. price as a direct selling expense.

Department's Position: We disagree. We verified NSK's U.S. advertising expense, and we are satisfied that NSK incurred no direct or "customer-directed" advertising in the U.S. for TRBs. Therefore, NSK correctly reported its indirect or corporate advertising as part of its U.S. indirect selling expenses.

Comment 30: NSK objects to the use of the U.S. short-term credit rate in the calculation of inventory carrying cost. NSK maintains that because its U.S. subsidiary, NSK Corporation (NSKC), has six months to pay for the imported merchandise, the parent company incurs the cost of keeping the goods in inventory for NSKC. Since it is the time value of the parent's funds being measured and, according to reasonable commercial practice, the parent would borrow at the lower rate in Japan, NSK argues that the Department should use the home market interest rate, which is consistent with commercial reality, to impute the U.S. inventory carrying cost.

Department's Position: We agree with the respondent. Normally, the Department calculates U.S. inventory carrying cost using the U.S. interest rate because the U.S. subsidiary bears the full cost of carrying the merchandise. However, as per *High Information Content Flat Panel Displays and Display Glass Thereof from Japan* (July 16, 1991, 56 FR 32399), if the payment terms that the parent extends to its subsidiary, in combination with the time the merchandise remains in the subsidiary's inventory, indicates that the parent bears the cost of carrying the merchandise for a portion of time the merchandise is in inventory, then the parent's short-term interest rate will be used to calculate that portion of the inventory carrying cost. Accordingly, we have recalculated NSKC's U.S. inventory carrying cost using NSK's short-term interest rate for the time that NSK bears the cost of carrying the inventory.

Comments Regarding Cost of Production Issues

Comment 31: Timkin argues that Koyo's COP response is deficient because it aggregates costs on a factory-wide basis, in part relying on corporate-wide variances. Timken believes that Koyo should at least account for costs on a product-line basis, especially in instances where both scope and non-scope merchandise are produced in the same plant. Otherwise, Timken asserts, the actual costs will be distorted.

Department's Position: We verified Koyo's cost system and found it acceptable. Koyo did not use a corporate-wide variance calculation. Its standard costs are adjusted to actual costs by the variances incurred at each factory. Koyo calculated the plant-wide variance by comparing the total plant-wide actual costs of production with the plant-wide standard costs, which we determined did not distort model-specific costs of production.

Comment 32: Timken argues that Koyo has not demonstrated that inputs from related parties were purchased at arm's-length prices and that section 773(e) of the Tariff Act requires the use of arm's-length prices in the calculation of constructed value. Timken asserts that the Department should adopt the methodology submitted by Koyo in its supplemental response to calculate an arm's-length price. Alternatively, Timken argues, the response should be rejected as materially inadequate.

Department's Position: We disagree. During verification of Koyo's response, we tested transactions between related parties by comparing purchases of similar products between related and unrelated suppliers and determined that they were at arm's-length prices. In instances where an input was supplied exclusively by a related supplier, and a comparison of prices between related and unrelated suppliers was not possible, we verified that the price of the input was above COP. Accordingly, no adjustment was made to the related party transactions.

Comment 33: Timken argues that Koyo's use of a standard corporate hourly rate to calculate labor expenses results in understated labor costs. Timken contends that Koyo's methodology overlooks the fact that large wage differentials exist between skilled and unskilled, and male and female workers in Japan. Timken argues that because Koyo's methodology fails to report labor costs attributable to manufacture of the product under review, the response should be rejected in favor of the best information otherwise available.

Department's Position: We disagree. We accepted the corporate-wide labor rate because the other products produced by Koyo involve similar manufacturing processes as those processes required for the subject merchandise. Therefore, we believe that no distortion occurred as a result of using this rate.

Comment 34: Timken believes that the Department should reject Koyo's calculation of interest expense when calculating COP. Timken asserts that Koyo has dramatically reduced its long and short-term interest expense by offsetting it with interest income earned on both long and short-term deposits. Timken argues that, according to Departmental practice, Koyo is only allowed to offset its interest expense by short-term interest income related to the current operations of the firm.

Additionally, Timken contends that the Department must reject Koyo's interest expense since it is based only on the fiscal year ending in 1989, and not on an average of the financial data for the fiscal years ending in 1989 and 1990. Timken notes that the Department stated in its COP verification report that Koyo's interest expense "would have been different" had it been based on the average of the 1989 and 1990 fiscal years.

Finally, Timken argues that Koyo should not have reduced its total interest expense for COP by an amount reflecting the costs associated with the financing of accounts receivable. Timken asserts that Koyo made this adjustment in an effort to insure an apples-to-apples comparison between COP and home market sales. However, Timken argues, this adjustment to COP distorts the comparison since the Department compares an unadjusted home market price to COP.

Department's Position: We verified that Koyo's interest expense offset did not include long-term interest income; therefore, no revisions were necessary. Additionally, Koyo's interest expenses were adjusted to reflect the average interest expense incurred for the fiscal years ending in 1989 and 1990.

For our COP analysis, we revised Koyo's submitted interest expense. Koyo's attempt to offset its COP interest expense by an amount reflecting the costs associated with the financing of its accounts receivable is improper since the home market price being compared to the COP is not net of these expenses. Therefore, the revised amount includes the interest expenses associated with the financing of accounts receivable.

Comment 35: Timken contends that the ratios used by the Department to adjust COP for the preliminary results for unreported non-operating and extraordinary expenses should be used again when the Department calculates the final results. Timken also contends that an additional adjustment should be made to COP for payments of bonuses to directors and statutory auditors. Timken argues that, although these amounts are paid from retained earnings and are not reflected in the current year's income statement, they still represent part of the cost of producing the merchandise and should be included in the COP for the final results.

Department's Position: Consistent with the preliminary results, we adjusted Koyo's submitted COP for unreported non-operating and extraordinary expenses. No adjustment was made to COP to include the expenses associated with bonuses for directors and statutory auditor's fees, as the amount was insignificant according to 19 CFR 353.59(a).

Comment 36: Timken argues that the Department should reject the cost data for all models not produced in the period of review. Timken alleges that Koyo did not provide an adequate explanation of the methodology it used to reconstruct the costs for these models. Timken argues that, if COP or constructed value is necessary for these models, the Department should rely on the best information otherwise available.

Department's Position: We found that COP data submitted for the bearings not produced during the review period, which was the most recent data available, acceptable for the purposes of this review.

Comment 37: Timken argues that the Department should utilize the best information otherwise available for NSK's material costs for several reasons: (1) The Department could not verify whether total material expenses were captured for the subject merchandise; (2) NSK understated the material costs for products purchased from subcontractors; (3) NSK made no attempt to demonstrate, and the Department could not determine during verification, whether NSK's transactions with related subcontractors were at arm's-length prices; (4) there was no adjustment to material cost for waste; (5) the Department was unable to verify NSK's system of accumulating costs associated with defective parts; and (6) the Department was unable to verify the materials usage variance amounts supplied by NSK.

Department's Position: The Department examined a specific material cost for the subject merchandise, and overall material costs for all the products that NSK produces, but did not attempt to examine total material cost for the subject merchandise. We verified that, for a specific material, the standard cost was less than the actual cost. However, overall, we are satisfied that NSK's reported material costs were not understated since the variance which accounts for the differences between standard and actual cost was correctly incorporated into the reported amounts. Accordingly, we did not adjust the reported material costs. Also, the Department did not have time to verify related parties' cost. Because NSK verified overall, we are accepting NSK's data.

With regard to waste, we are satisfied that NSK properly included this expense in the cost of manufacturing. With regard to defective parts and material usage variance, we found no notable discrepancies in the submitted data. Accordingly, we made no adjustment for these items.

Comment 38: Timken argues that the Department should include the "idle assets" component of the depreciation expense in NSK's total COP as it has done in the past (*Antifriction Bearings*, 54 FR 19105). Timken contends that NSK's failure to supply the requested information constitutes a deliberate attempt to impede the completion of the administrative review.

Department's Position: We agree with Timken's assertion that depreciation of "idle assets" should be included in the submitted costs. However, these costs

are insignificant within the meaning of 19 CFR 353.59. Therefore, we made no adjustment to NSK's costs.

Comment 39: Timken claims that NSK neglected to include write-offs and write-downs in its reported COP. Timken asserts, therefore, that the Department should recalculate NSK's COP to include write-offs and write-downs as these are normal costs of producing the products (*Antifriction Bearings*, 54 FR 19076).

Department's Position: We agree with Timken that these costs should be included in the reported data. However, the financial statements indicate that these costs are insignificant within the meaning of 19 CFR 353.59. Therefore, we made no adjustment to NSK's costs.

Comment 40: Timken claims that, because NSK cannot demonstrate that the interest it received was directly related to the production of the merchandise under consideration, NSK's response regarding interest income as an offset to interest expense in the COP calculation is deficient. Timken recommends that the Department recalculate interest expense, excluding the full amount of the claimed offset.

Department's Position: When calculating COP, the Department requires that interest income be related to the production of the merchandise subject to the finding in order to offset it against interest expense. We are satisfied that the interest income NSK received on bank deposits and notes meets this requirement since these are within the normal operations of the firm.

Comment 41: Timken alleges that NSK has understated its selling, general, and administrative (SG&A) expenses in its reported COP by not including expenses incurred by the consolidated related firms responsible for the distribution of the subject merchandise. Timken recommends that the Department use the consolidated SG&A figure in its distribution of SG&A costs, instead of the understated, unconsolidated SG&A expenses.

Department's Position: We agree with Timken. NSK did not incorporate the selling expenses of the consolidated firms responsible for the distribution of bearings in the home market. Furthermore, NSK'S G&A costs were based on the expenses incurred for bearings sold in the home market. The Department's practice is to base G&A expenses on the company as a whole versus one particular market. Accordingly, the Department revised NSK's reported SG&A expense and used the SG&A expenses of the consolidated entity.

Comment 42: NSK maintains that it was not reasonable for the Department to increase its reported COP across-the-board for "rounding inconsistencies". NSK contends that the Department should dismiss this "rounding inconsistency" since it was found in only one of two verified COPs and, from any reasonable accounting standpoint, is *de minimis* and immaterial to the outcome.

Department's Position: We agree with NSK's contention that it is not reasonable to adjust all reported costs for a rounding error when the error was found in only one of two verified costs. We cannot arbitrarily adjust only half of the costs. Likewise, we need not adjust the reported costs by half of the amount of the rounding error, as the adjustment is then insignificant. Therefore, for the final results of the review, we have not adjusted NSK's reported costs for rounding errors.

Comments Regarding Use of Best Information Available

Comment 43: Timken argues that the Department should not use the weighted-average margin as the best information available for transactions that lack COP data. Timken asserts that Koyo could simply withhold cost data on models that would produce high margins, and instead have the lower weighted-average margin applied to those transactions. Timken contends that the best information available, under these circumstances, should consist of the highest rate for another respondent in the current review, or the rate for Koyo in the prior review period, whichever is higher.

Department's Position: Koyo submitted COP data for every home market model included in the home market sales listing. Therefore the use of best information was not necessary.

Comment 44: Koyo argues that the Department acted unfairly by using the best information available for U.S. sales that had no acceptable such or similar merchandise in the home market sales listing, and had no constructed value data for the U.S. model. Koyo contends that, even though the Department did not request constructed value data, Koyo supplied the data for the U.S. models which it determined did not have an acceptable home market match according to the model match methodology used in the 1974–79 review period. According to Koyo, the changes in the model match methodology resulted in the need for additional constructed value data. Koyo argues that it should have the opportunity to submit the additional constructed value data, since it was not informed prior to the preliminary results that such information was lacking.

Department's Position: After the preliminary results we determined that we may have needed constructed value data for one U.S. model to calculate the final results. Since Koyo was unaware of the changes to the model match and cost test methodologies when it originally submitted its response, we allowed Koyo the opportunity to submit constructed value data for the one U.S. model, and we have used this information for the final results.

Comment 45: NSK contends that the Department erred in its use of best information available in two areas: U.S. models for which the Department could find no physical dimension data and U.S. models missing difference-in-merchandise (difmer) information. NSK concedes that some model names used by NSKC, the U.S. subsidiary, were an abbreviated form of nomenclature, and points out that the necessary cross-referencing can easily be done from the information on the record, thus allowing more matches with home market models. As for the absence of difmer information, NSK objects to the unreasonable use of the full home market variable cost of manufacture (VCOM) as the difmer, which exaggerates the margin or creates one where none would otherwise exist. NSK suggests using a weighted-average margin or basing FMV of the matched model on the adjusted price of the home market model plus twenty percent of home market VCOM as more reasonable applications of best information available for missing difmer information.

Department's Position: We agree with NSK that, as for the differences in nomenclature, the reporting error was minor and the cross-referencing was apparent. Therefore, we corrected the nomenclature inconsistencies for the final results. We also agree with NSK that in the absence of U.S. difmer information, we should base the FMV of the matched model on the adjusted price of the home market model plus twenty percent of home market VCOM. We have used this as the best information available for the final results. Consistent with Department practice, twenty percent is the maximum difmer adjustment allowed for comparison of similar models.

Issues Regarding Isuzu

Comment 46: Isuzu objects to the Department's use of best information available in determining Isuzu's margin for all sales made during the period of review. Isuzu claims that it has cooperated with the Department throughout the review and has provided

timely information in its responses. Isuzu claims that all problems with its response which were discovered at verification had been corrected and were already, or could have easily been, verified before the Department issued the preliminary results. According to Isuzu, the Department needlessly delayed action and therefore missed the opportunity to conduct a second verification before issuing the preliminary results.

Department's Position: Isuzu is correct in its assertion that the responses it provided to the original and supplemental questionnaires issued by the Department were timely, however these responses were neither complete nor accurate. It became apparent during verification of Isuzu's home market sales response that the information submitted was neither accurate nor complete. In instances where a respondent fails to submit complete and accurate responses, the Department is authorized to use the best information available (see 19 CFR 353.37(a)). Indeed, we discovered that Isuzu failed to report an estimated 60 percent of its home market sales of merchandise subject to the finding. While the Department may generally accept minor corrections to errors uncovered at a verification, the purpose of a verification is to ascertain the accuracy and completeness of the information submitted, not to allow wholesale revisions of the nature required by Isuzu's deficient response.

Due to the nature of the deficiency, and contrary to Isuzu's assertions, the problems revealed at the verification were not corrected and could not be verified easily before the issuance of the preliminary results. We determined that, in order to correct Isuzu's deficient home market sales listing, Isuzu would have had to submit another computer tape containing the missing and unverified sales information. We determined that such a submission at such a late point in the proceeding would have been untimely since it would require a second verification and further analysis before the issuance of the preliminary results.

Therefore, due to the nature and the magnitude of Isuzu's deficiency in its original submission, and the untimeliness of its unverified second submission, we were left with no other alternative than to apply best information available. As best information available we used the highest weighted-average margin calculated for another company during the period of review.

Comment 47: Isuzu argues that neither the nature of the unverified information nor the time required for additional analysis justify the Department's rejection of its submission of a revised computer tape after the verification.

First, Isuzu claims that the few minor errors which were identified at the verification were corrected for the revised submission. According to Isuzu, these changes require no further analysis or verification by the Department.

Second, Isuzu asserts that the addition of home market and U.S. sales, which were omitted from the original submission, do not in any way affect the calculation of its claimed adjustments, since its expenses were allocated over the sales of all products. Therefore, Isuzu's claimed adjustments required no further verification or analysis.

Finally, Isuzu argues that the Department is overly concerned about the revised volume and value figures which resulted from the inclusion of previously omitted sales. According to Isuzu, volume and value figures are primarily used to determine the viability of the home market. Since Isuzu's home market sales increased substantially in the revised submission, this would only make the home market more viable. Isuzu claims that the Department need only compare the total monthly figures from the computer tape to the summary figures provided at the verification to insure that the sales figures reported are complete.

Department's Position: We disagree with Isuzu's assertion that we acted unjustly by rejecting its submission of a revised computer tape after the verification had concluded. We view the submission of a revised unverified computer tape after verification has concluded as untimely because the information contained on the new tape would have to be verified before it could be used to calculate the preliminary results. A second verification at this point in the proceeding is not feasible if the review is to be conducted in a timely manner. While Isuzu notes that the Department corrected and verified the few minor errors that were revealed at verification, the most serious deficiency was Isuzu's failure the report an estimated 60 percent of its home market sales of scope merchandise. Although the deficient home market sales listing was noted in the verification report, the unreported sales were not verified and it was decided that it was not proper to accept a new submission of such magnitude during verification.

Isuzu's failure to report all home market sales has consequences that reach far beyond the issue of viability in the home market. Indeed, the issue of viability did not play a significant role in our decisionmaking, since there was no serious question regarding home market viability. However, an incomplete database of home market sales would lead to an inaccurate FMV, and ultimately to an unreliable dumping margin. Since we found Isuzu's original computer tape submission to be deficient at verification, we determined that we could not accept the second computer tape to calculate the final results since we did not have enough time to verify the information on the new computer tape before issuing the preliminary results. Therefore, we cannot be assured that the calculations from this new unverified database would be valid.

Comment 48: Isuzu believes that the Department's use of the highest weighted-average margin calculated for the period of review is punitive and unwarranted in this case, since it cooperated with the Department and attempted to correct any problems discovered at verification. Isuzu contends that under these circumstances the law requires the Department to use the most accurate information available to calculate Isuzu's margin. Isuzu asserts that if the Department continues to reject the revised submission, it is obligated to use the verified portions of the original submission as the most accurate information available. Isuzu believes that the Department can easily calculate accurate margins from the original submission since the problem of unreported sales was inadvertent and, therefore, could not have a significant or systematic impact on the margins.

Department's Position: Due to the nature of Isuzu's deficiency, the original submission is unusable since it contains a substantially incomplete database of home market sales. Any attempt to analyze such an incomplete listing of home market sales would result in the calculation of inaccurate FMVs and ultimately an inaccurate and unreliable dumping margin. The Department's use of best information available depends, in part, on the degree of deficiency of a party's response (see 19 CFR 353.37). In cases where a respondent's submission is so deficient that it is unusable, the Department generally uses the highest rate for a responding firm during the same review period as the best information available (Final Results of Antidumping Administrative Review, Antifriction Bearings and Parts Thereof from the Federal Republic of Germany et. al. (56 FR 31704, July 11, 1991)).

Comments Regarding Clerical Errors

Comment 49: Timken contends that, at the conclusion of the computer program used to calculate the preliminary results

for Koyo, the Department committed a clerical error and failed to calculate a margin based on the best information available to a number of observations that had no match in the FMV or constructed value file. Timken believes that the Department simply disregarded these transactions for the purposes of the preliminary results.

Department's Position: Contrary to Timken's assertions, we did not disregard Koyo's U.S. sales which did not have an acceptable match in the FMV or constructed value file. For the preliminary results, we assigned to these sales Koyo's weighted-average margin for the period of review. For the final results, we were able to use Koyo's data to calculate a margin or every U.S. sale.

Comment 50: Timken and Koyo contend that the Department committed a clerical error in applying the set-splitting ratios to the newly-created transaction data for cups and cones. They note that, while the set-splitting ratios for cups were properly applied to the sets to create transaction data for cups, the set-splitting ratios for cones were mistakenly applied to the newly-created transaction data for the cups rather than to the transaction data for the sets. The result is that the transaction data for the cones are vastly understated.

Department's Position: We agree and have corrected this clerical error for the final results.

Comment 51: Koyo notes that the Department committed a number of clerical errors when calculating the preliminary results. First, Koyo asserts that the Department failed to convert home market commissions and FMV from yen to dollars when calculating the cap on home market commissions and indirect selling expenses. Second, Koyo argues that the Department failed to properly merge cones sold in the home market with COP data when conducting the cost test. Finally, Koyo contends that the Department mistakenly added direct and indirect selling expenses and finance expenses to constructed value when it should have deducted them.

Department's Position: We agree and have corrected these clerical errors for the final results.

Comment 52: NSK contends that the Department should correct various ministerial, clerical, and computer-related errors for the final results.

Department's Position: We agree and have made these corrections in the final results.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we determine that the following margins exist for the period August 1, 1988, through July 31, 1989:

Manufacturer/exporter	Margin (percent)
Koyo Seiko Company Ltd.	15.89
NSK Ltd.	6.15
Isuzu Motors, Ltd.	[1] 15.89
Toyota Motors Corporation	[1] 15.89
Nachi-Fujikoshi Corporation	[2] 18.07

[1] BIA rate—highest rate for any other reviewed firm.

[2] No shipments; margin from last review in which there were shipments.

The Department shall determine and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service. Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, based on the above margins, shall be required on shipments of TRBs from Japan.

For any further entries of this merchandise from an exporter not covered in this review and who is unrelated to any reviewed firm, a cash deposit of 16.20 percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Deted: December 9, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-29979 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Oil Country Tubular Goods ("OCTG")

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments on certain oil country tubular goods ("OCTG").

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for a total of 459.787 net tons of certain oil country tubular goods ("OCTG") through March 31, 1992 under paragraph 8 of the U.S.-Japan Steel Arrangement.

SHORT-SUPPLY REVIEW NUMBER: 62.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain OCTG. On December 4, 1991, the Secretary received an adequate petition from Red Hill Geothermal, Inc. ("Red Hill"), requesting short-supply allowances for 459.787 net tons of 18⅝ inches in diameter, 87.5 Lb/foot, electric resistance weld, NT80DE steel oil well casing, through March 31, 1992. This request was made under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products (U.S.-Japan Steel Arrangement). Red Hill is requesting short supply because it alleges that the requested product is not available domestically and because its potential foreign supplier has insufficient export licenses available.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than January 3, 1992.

Comments

Interested parties wishing to comment upon this review must send written comments not later than December 23, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after December 23, 1991. All documents submitted to the

Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Laurie Lucksinger, Officer of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–1382 or (202) 377–3793.

Dated: December 11, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91–30004 Filed 12–13–91; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Baltimore, MD

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $230,400 in Federal funds and a minimum of $40,659 in nonFederal (cost sharing) contributions from 05/1/92 to 04/30/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Baltimore, Maryland SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businessses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered.

Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of

1988 (Pub. L. 100-690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is January 23, 1992. Applications must be postmarked on or before January 23, 1992. Proposals will be reviewed by the Chicago Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: David Vega, Regional Director, Chicago Regional Office, Minority Business Development Agency, 55 E. Monroe Street, suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, Washington Regional Office at (202) 377-8275.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at: U.S. Department of Commerce, Minority Business Development Agency, 14th and Constitution Avenue, NW., room 6723, Washington, DC 20230.

A pre-application conference will be held on December 19, 1991 at 9 a.m.

Address: The Equitable Building, Third Floor, HUD Conference Room (A&B), 10 North Calvert Street, Baltimore, Maryland 21202.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 9, 1991.

Gina A. Sanchez,

Regional Director, Washington.

[FR Doc. 91-29891 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

December 11, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased to include a addition 5 percent for traditional folklore products made of handloomed fabrics, as provided for in the bilateral agreement between the Governments of the United States and Indonesia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990; and 56 FR 60101, published on November 27, 1991). Also see 56 FR 26392, published on June 7, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 4, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1991 and extends through June 30, 1992.

Effective on December 18, 1991, you are directed to amend the directive dated June 4, 1991 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
341	595,778 dozen.
351/651	308,568 dozen.
641	1,510,318 dozen.
648	1,508,378 dozen.
Sublevels in Group II	
336/636	391,892 dozen.
342/642	224,823 dozen.
350	81,498 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29970 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Macau

December 10, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to increase the current minimum consultation level for Gategory 239.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51944, published on December 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on December 17, 1991, you are directed to amend the December 12, 1990 directive to increase the limit for Category 239 in Group I to 120,000 kilograms [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29916 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1990.

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 10, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the United Mexican States reached agreement to extend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, for the period beginning on January 1, 1992 and extending through December 31, 1992, with either country's option to extend through December 31, 1993.

A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for certain cotton, wool and man-made fiber textile products for the period January 1, 1992 through December 31, 1992, including certain categories subject to the Special Regime. Sublimits and separate limits for Normal Regime categories are established for products which are not subject to the terms of the Special Regime. The limit for Category 317 is being reduced for carryforward used in 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of their provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following levels and sublevels of restraint:

Category	Twelve-month restraint limit
Group I	
218-220, 225-227, 313-326, 611-617 and 625-629, as a group.	50,562,000 square meters.
Sublevels in Group I	
218	1,055,590 square meters.
219	15,730,400 square meters.
313	28,090,000 square meters.
317	13,287,968 square meters.
326	1,055,590 square meters.
611	2,111,183 square meters.
Individual Limits not in a group	
300/301/607-Y [1]	7,865,200 kilograms of which not more than 4,269,680 kilograms shall be in Category 300.
334/634	150,000 dozen.
335 (Special Regime)	135,000 dozen.
336/636 (Special Regime).	449,440 dozen.

Category	Twelve-month restraint limit
338/339/638/639 (Special Regime).	1,400,000 dozen.
340/640 (Special Regime).	454,492 dozen.
341/641	838,885 dozen of which not more than 303,081 dozen shall be in Category 341-Y/641-Y [2].
342/642 (Special Regime).	300,000 dozen.
347/348/647/648 (Special Regime).	4,500,000 dozen.
351/651 (Special Regime).	350,000 dozen.
352/652 (Special Regime).	2,800,000 dozen.
359-C/659-C [3] (Special Regime).	1,800,000 kilograms.
363	5,500,000 numbers.
410	397,160 square meters.
433	11,000 dozen.
435	12,000 dozen.
443	117,312 numbers.
604-A [4]	1,927,778 kilograms.
604-O/607-O [5]	1,185,902 kilograms.
633 (Special Regime)	100,000 dozen.
635	145,185 dozen.
643	155,556 numbers.
669-B [6]	744,444 kilograms.
670	3,000,000 kilograms.
Normal Regime Category (Not subject to the Special Regime)	
335 (sublimit)	35,000 dozen.
336/636 (sublimit)	224,720 dozen.
338/339/638/639 (sublimit).	650,000 dozen.
340/640 (sublimit)	113,622 dozen.
342/642	112,360 dozen.
347/348/647/648	650,000 dozen.
351/651	75,000 dozen.
352/652	1,797,760 dozen.
359-C/659-C (sublimit).	250,000 kilograms.
633 (sublimit)	10,000 dozen.

[1] Categories 300 and 301; Category 607-Y: only HTS numbers 5509.53.0030 and 5509.53.0060.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[3] Category 359-C: only HTS numbers 6103.42.2010, 6103.42.2025, 6103.49.3034, 6104.62.1010, 6104.62.1020, 6104.69.3010, 6114.20.0042, 6114.20.0048, 6114.20.0052, 6203.42.2005, 6203.42.2010, 6203.42.2090, 6204.62.2005, 6204.62.2010, 6211.32.0007, 6211.32.0010, 6211.32.0025, 6211.42.0007 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2015, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2005, 6203.43.2010, 6203.43.2090, 6203.49.1005, 6203.49.1010, 6203.49.1090, 6204.63.1505, 6204.63.1510, 6204.69.1005, 6204.69.1010, 6210.10.4015, 6211.33.0007, 6211.33.0010, 6211.33.0017, 6211.43.0007 and 6211.43.0010.

[4] Category 604-A: only HTS number 5509.32.0000.

[5] Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A); Category 607-O: all HTS numbers except 5509.53.0030 and 5509.53.0060 (Category 607-Y).

[6] Category 669-B: only HTS numbers 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and United Mexican States.

The bilateral agreement establishes separate treatment for products in certain categories. Those products which are made of U.S. formed and cut fabric are subject to the Special Regime and to the category limits listed in this directive. Those products which are exported from Mexico to the United States under provisions of the Special Regime on and after January 1, 1992 must be accompaniued by a properly certified Form ITA-370P.

Any shipment for entry under the Special Regime Program which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry. Invoices viased for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products in categories covered by the Special Regime, but that are not subject to the Special Regime, are subject to the applicable limits and sublimits listed in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29971 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Yugoslavia

December 10, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated January 18, 1990 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia establishes limits for the period beginning on January 1, 1992 and extending through December 31, 1992. The 1992 level for Category 618 will be zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended by a Memorandum of Understanding dated January 18, 1990, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
300/301	1,890,826 kilograms.
338/339	555,490 dozen of which not more than 333,294 dozen shall be in Categories 338-S/339-S [1].
340/640	482,297 dozen.
341/641	314,483 dozen.
410	510,050 square meters.
433	8,220 dozen.
434	9,113 dozen.
435	40,205 dozen.
442	11,300 dozen.
443/643	363,397 numbers of which not more than 108,266 numbers shall be in Category 443.
444	94,854 numbers.
447/448	50,390 dozen of which not more than 31,901 dozen each shall be in Categories 447 and 448.
604-A [2]	364,206 kilograms.
611	11,886,428 square meters.
618	-0-
624	3,825,375 square meters.
666-B [3]	1,088,035 kilograms.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 604-A: only HTS number 5509.32.0000.

[3] Category 666-B: only HTS numbers 6301.10.0000, 6301.40.0010, 6301.40.0020 and 6301.90.0010.

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29917 Filed 12-13-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm will meet in closed session on January 8-9 and February 12-13, 1992 at the BDM Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. As these meetings the Task Force will examine the lessons learned during Operation Desert Shield/Desert Storm that may have potential impacts on future weapons acquisition decisions and approaches, technology developments, operational concepts, and U.S. qualitative combat advantages.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: December 10, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-29882 Filed 12-13-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on January 15, 1992, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100. Telephone (202) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991
56 FR 35852, Jul. 29, 1991
56 FR 52017, Oct. 17, 1991
56 FR 55910, Oct. 30, 1991
56 FR 56065, Oct. 31, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (U.S.C. 552a), which requires the submission of an altered system report.

Dated: December 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

System name:

Defense Manpower Data Center Data Base (56 FR 55910, October 30, 1991).

Changes:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add two new paragraphs to the entry. Insert the following after paragraph sixteen "(3) To the Department of Health and Human Services, Health Care Financing Administration (HCFA) for the purpose of monitoring HCFA

reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals."

Insert "To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment." at the end of paragraph twenty-one.

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93920–5000.

Back-up files maintained in a bank vault in Herman Hall, Naval Postgraduate School, Monterey, CA 93920–5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location; training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; and home and work addresses.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax ID of providers or potential providers of care.

Selective Service System registration data.

Department of Veterans Affairs disability payment records.

Credit or financial data is required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD.

Office of Personnel Management (OPM) Central Personnel Data File (DPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; Pub. L. 95–452, as amended (Inspector General Act of 1978); and Executive Order 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Veterans Affairs (DVA), Statistical Policy and Research Office, Office of Information Management and Statistics, DVA Management Sciences Division to provide military personnel employment and pay data for the purpose of selection samples for surveys asking veterans about the use of veteran benefits and satisfaction with DVA services, and to validate eligibility for DVA benefits; and to analyze the cost to the individual of military service under the Veteran's Group Life Insurance program.

To the Department of Veterans Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time serve from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. the law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006–3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the "guaranteed minimum" disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense

physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DoD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military members and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger or reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center—Tapes are stored in a locked cage in a controlled access area; tapes can by physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records", 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veterans Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–29881 Filed 12–13–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD92–01642T West Virginia–8]

State of West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 9, 1991.

Take notice that on November 26, 1991, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Keener/Injun, Gantz/Fifty-Foot, Gordon, 4th Sand and 5th Sand qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers certain lands in Marion, Monongalia, Preston and Taylor Counties, West Virginia.

The notice of determination also contains West Virginia's findings that the referenced portion of the Keener/Injun, Gantz/Fifty-Foot, Gordon, 4th Sand and 5th Sand Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–29886 Filed 12–13–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–269–001]

Kamine/Besicorp Syracuse L.P.; Amendment to Filing

December 9, 1991.

On December 4, 1991, Kamine/Besicorp Syracuse L.P. tendered for filing an amendment to its filing in this docket.

The amendment clarifies the ownership structure of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by December 19, 1991 and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to invervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–29885 Filed 12–13–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–43–NG]

American Natural Gas Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting American Natural Gas Corporation (American Natural) blanket authorization to import up to 219 Bcf of Canadian natural gas over a two year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–29967 Filed 12–1–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91-47-NG]

Ocean State Power II; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy; Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Ocean State Power II (Ocean State II) blanket authorization to import and export natural gas. The order authorizes Ocean State II to import and to export up to 36.5 Bcf of natural gas over a two-year term beginning on the date of first import or export delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-29968 Filed 12-13-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-23; Certification Notice—91]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has filed self-certification in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following company has filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Sumas Cogeneration Company, L.P., Redmond, WA	12-02-91	Combined Cycle	125.4	Sumas, WA.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC, on December 9, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-29969 Filed 12-13-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4083-5]

Proposed Settlement: Benzene Waste Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of the following case: *American Petroleum Institute* v. *U.S. Environmental Protection Agency*, No. 90-1238 (D.C. Cir.).

This case involves a challenge to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) (promulgated on March 7, 1990 (55 FR 8292)) establishing emissions standards for benzene emissions from wastewater operations (40 CFR Part 61, Subpart FF). The settlement also resolves a pending petition for reconsideration filed by the American Petroleum Institute on May 7, 1990.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive comments relating to the settlement from persons who are not named as parties to this litigation. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such a settlement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the settlement has been lodged with the Clerk of the United States Court of Appeals for the District of Columbia Circuit. Copies of the proposed settlement are also available from Robert J. Martineau, Jr., Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260-7606. Written comments should be sent to Robert J. Martineau, Jr., at the above address and must be submitted on or before January 16, 1992.

Dated: December 4, 1991.

Raymond S. Ludwiszewski,

Acting General Counsel.

[FR Doc. 91-29958 Filed 12-13-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4083-3]

Science Advisory Board, Executive Committee; Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Executive Committee, will conduct a meeting on Tuesday and Wednesday, January 7th and 8th, 1992. The meeting will be held in the Administrator's Conference Room, 1145 West Tower at the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. It will begin at 8:30 a.m. and adjourn no later than 5:30 p.m. on January 7th and on the 8th it begins at 8:30 a.m. and adjourns no later than 1 p.m.

At this meeting, the Executive Committee is currently planning to hear or review reports from committees, including:

Clean Air Scientific Advisory Committee
- The Agency's ranking of 189 hazardous air pollutants

Drinking Water Committee
- The Agency's consideration of VIRALT

Ecological Processes and Effects Committee
- The Agency's guidance for handling of dredged materials

Environmental Engineering Committee
- The Agency's pollution prevention research program
- The Agency's constructed wetlands program

Indoor Air Quality Committee
- The Agency's uptake biokinetic model

Radiation Advisory Committee
- The Agency's research agenda for non-ionizing electromagnetic fields.

In addition the Executive Committee will discuss:

a. Aspects of the Agency's program of research and development

b. The Agency's Environmental Education Program

c. An SAB policy for handling it working papers and drafts

d. Additional items of emerging from SAB Committees and the Agency.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wish to submit comments should contact Dr. Donald G. Barnes, Staff Director of the Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260-4126 or by Fax at (202) 260-9232. Limited unreserved seating will be available at the meeting.

Dated: December 6, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91-29953 Filed 12-13-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180852; FRL 3942-1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 22 States as listed below, and one to the United States Department of Agriculture. Also, nine crisis exemptions were initiated by various States. These exemptions, issued during the month of June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA denied specific exemption requests from the Texas and Washington Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-5806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of clomazone on sweet potatoes to control broadleaf weeds; June 10, 1991, to July 15, 1991. Alabama had initiated a crisis exemption for this use. (Libby Pemberton)

2. Arkansas State Plant Board for the use of triclopyr on rice to control jointvetch, hemp sesbania, and morningglory; June 20, 1991, to August 30, 1991. Arkansas had initiated a crisis exemption for this use. (Jim Tompkins)

3. Arkansas State Plant Board for the use of bromoxynil on rice growing within one-fourth mile of cotton or soybeans to control hemp sesbania, morningglory, pale smartweed, and cocklebur; June 20, 1991, to August 30, 1991. Arkansas had initiated a crisis exemption for this use. (Jim Tompkins)

4. California Department of Food and Agriculture for the use of fosetyl-aluminum (Aliette) on avocado trees to control phytophthora root rot; June 25, 1991, to June 24, 1992. (Susan Stanton)

5. California Department of Food and Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid; June 10, 1991, to July 15, 1991. (Andrea Beard)

6. California Department of Food and Agriculture for the use of gibberellins on harvested lemons to control sour rot; June 17, 1991, to August 31, 1991. California had initiated a crisis exemption for this use. (Susan Stanton)

7. California Department of Food and Agriculture for the use of avermectin B_1 on head lettuce to control serpentine leafminers; June 7, 1991, to December 31, 1991. (Libby Pemberton)

8. California Department of Food and Agriculture for the use of triadimefon on tomatoes to control powdery mildew; June 10, 1991, to March 31, 1992. (Susan Stanton)

9. Colorado Department of Agriculture for the use of permethrin on wheat to control pale western and army cutworms; June 21, 1991, to July 1, 1991. Colorado had initiated a crisis exemption for this use. (Andrea Beard)

10. Colorado Department of Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid; June 10, 1991, to December 31, 1991. Colorado had initiated a crisis exemption for this use. (Andrea Beard)

11. Delaware Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; June 21, 1991, to June 20, 1992. (Susan Stanton)

12. Idaho Department of Food and Agriculture for the use of avermectin B_1 on hops to control two-spotted spider mites; June 1, 1991, to September 15, 1991. (Jim Tompkins)

13. Indiana State Chemist and Seed Commissioner for the use of sethoxydim on mint to control grasses; June 7, 1991, to August 31, 1991. (Susan Stanton)

14. Louisiana Department of Agriculture and Forestry for the use of pendimethalin on sugarcane to control itchgrass and browntop panicum; June 3, 1991, to June 30, 1991. Louisiana had initiated a crisis exemption for this use. (Jim Tompkins)

15. Louisiana Department of Agriculture and Forestry for the use of triclopyr on rice to control jointvetch, morningglory, and alligatorweed; June

20, 1991, to August 30, 1991. Louisiana had initiated a crisis exemption for this use. (Jim Tompkins)

16. Louisiana Department of Agriculture and Forestry for the use of bromoxynil on rice grown within one-fourth mile of cotton and soybeans to control hemp sesbania, morningglory, smartweed, cocklebur, and Texas weed; June 20, 1991, to August 30, 1991. Louisiana had initiated a crisis exemption for this use. (Jim Tompkins)

17. Maine Department of Agriculture, Food, and Rural Resources for the use of cryolite on potatoes to control the Colorado potato beetle; June 17, 1991, to October 31, 1991. (Libby Pemberton)

18. Maryland Department of Agriculture for the use of clomazone on sweet potatoes, snap beans, cucumbers, and summer squash to control broadleaf weeds and grasses; June 13, 1991, to August 31, 1991. (Libby Pemberton)

19. Mississippi Department of Agriculture for the use of triclopyr on rice to control redstem and morningglory; June 20, 1991, to August 30, 1991. Mississippi had initiated a crisis exemption for this use. (Jim Tompkins)

20. Mississippi Department of Agriculture for the use of bromoxynil on rice grown within one-eighth mile of cotton and soybeans to control hemp sesbania, morningglory, and cocklebur; June 20, 1991, to August 30, 1991. Mississippi had initiated a crisis exemption for this use. (Jim Tompkins)

21. Montana Department of Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid; June 10, 1991, to November 1, 1991. (Andrea Beard)

22. Montana Department of Agriculture for the use of esfenvalerate on small grains (barley, oats, and wheat) to control cutworms; June 20, 1991, to July 1, 1991. Montana had initiated a crisis exemption for this use. (Andrea Beard)

23. Nebraska Department of Agriculture for the use of permethrin on wheat to control army cutworms. A specific exemption was granted on June 21, 1991, but all applications were completed by Nebraska under a crisis declaration by May 15, 1991. (Andrea Beard)

24. New Jersey Department of Environmental Protection for the use of clomazone on sweet potatoes to control broadleaf weeds; June 10, 1991, to October 31, 1991. (Libby Pemberton)

25. North Carolina Department of Agriculture for the use of clomazone on sweet potatoes to control broadleaf weeds; June 10, 1991, to July 15, 1991. North Carolina had initiated a crisis exemption for this use. (Libby Pemberton)

26. North Carolina Department of Agriculture for the use of iprodione on tobacco to control target spot; June 20, 1991, to June 30, 1991. North Carolina had initiated a crisis exemption for this use. (Susan Stanton)

27. Oklahoma Department of Agriculture for the use of permethrin on wheat to control army cutworms. A specific exemption was granted on June 21, 1991, but all applications were completed by Nebraska under a crisis declaration by March 31, 1991. (Andrea Beard)

28. Oregon Department of Agriculture for the use of avermectin B_1 on hops to control two-spotted spider mites; June 1, 1991, to September 15, 1991. (Jim Tompkins)

29. Oregon Department of Agriculture for the use of permethrin on red raspberries to control weevils; June 10, 1991, to August 10, 1991. (Andrea Beard)

30. Tennessee Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; June 6, 1991, to June 5, 1992. (Susan Stanton)

31. Texas Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; June 6, 1991, to June 5, 1992. (Susan Stanton)

32. Texas Department of Agriculture for the use of permethrin on wheat to control army cutworms. A specific exemption was granted on June 21, 1991, but all applications were completed by Texas under a crisis declaration by April 15, 1991. (Andrea Beard)

33. Texas Department of Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid. A specific exemption was granted on June 10, 1991, but all applications were completed by Texas under a crisis declaration by May 31, 1991. (Andrea Beard)

34. Texas Department of Agriculture for the use of triclopyr on rice to control alligatorweed and Texas weed; June 20, 1991, to August 30, 1991. Texas had initiated a crisis exemption for this use. (Jim Tompkins)

35. Washington Department of Agriculture for the use permethrin on red raspberries to control weevils; June 10, 1991, to August 10, 1992. (Andrea Beard)

36. Washington Department of Agriculture for the use of avermectin B_1 on hops to control two-spotted spider mites; June 1, 1991, to September 15, 1991. (Jim Tompkins)

37. Washington Department of Agriculture for the use of esfenvalerate on cranberries to control black vine weevils; June 20, 1991, to August 31, 1991. (Libby Pemberton)

38. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of bromoxynil on sweet corn to control broadleaf weeds; June 20, 1991, to August 30, 1991. (Jim Tompkins)

39. Wyoming Department of Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid; June 10, 1991, to December 12, 1991. Wyoming had initiated a crisis exemption for this use. (Andrea Beard)

40. United States Department of Agriculture for the use of methyl bromide on exported oak logs to control oak wilt in and throughout the United States at points of export; June 22, 1991, to June 21, 1992. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on June 1, 1991, for the use of sodium chlorate as a desiccant on wheat. This program has ended. (Susan Stanton)

2. Arkansas Office of the Governor on June 7, 1991, for the use of clomazone on sweet potatoes to control broadleaf weeds and annual grasses. This program has ended. (Libby Pemberton)

3. Arkansas State Plant Board on June 1, 1991, for the use of fomesafen on snap beans to control common ragweed, jimsonweed, morningglory, and pigweed. This program has ended. (Susan Stanton)

4. Georgia Department of Agriculture on June 12, 1991, for the use of sodium chlorate on wheat to control weeds. This program is expected to last until harvest is completed. (Susan Stanton)

5. Kansas Department of Agriculture on June 1, 1991, for the use of nicosulfuron and primisulfuron on field corn to control annual and perennial grasses. This program has ended. (Jim Tompkins)

6. Michigan Department of Agriculture on June 5, 1991, for the use of bifenthrin on strawberries to control sap beetles. This program is expected to last until November 1, 1991. (Jim Tompkins)

7. Mississippi Department of Agriculture and Commerce on June 1, 1991, for the use of sodium chlorate as a desiccant on rapeseed. This program has ended. (Susan Stanton)

8. Montana Department of Agriculture on June 5, 1991, for the use of malathion on canola to control flea beetles. This program has ended. (Jim Tompkins)

9. Wisconsin Department of Agriculture, Trade, and Consumer Protection on June 1, 1991, for the use of sethoxydim on canola to control foxtail grasses. This program has ended. (Susan Stanton)

EPA has denied specific exemption requests from the:

1. Texas Department of Agriculture for the use of MVP Bioinsecticide on cabbage, broccoli, and cauliflower to control diamondback moths. A notice of solicitation of public comment published in the **Federal Register** of February 13, 1991 (56 FR 5827); no comments were received. The Agency denied the request because control achieved with the use of MVP is not significantly different from the control obtained by the registered B+ products. Also, the data submitted by the applicant did not demonstrate that significant economic losses would occur without the use of MVP. (Rebecca Cool)

... Washington Department of Agriculture for the use of clopyralid on asparagus to control thistle. The Agency has denied the request because an urgent, nonroutine situation does not exist. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: November 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-29936 Filed 12-13-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180853; FRL 3949-6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 10 States as listed below. Two crisis exemptions were initiated by the Texas Departments of Agriculture. These exemptions were issued during the months of July and August, except for one issued in June. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied exemption requests from the Oklahoma and Texas Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-5806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of fosetyl-aluminum (Aliette) on collard greens to control downy mildew; July 16, 1991, to July 15, 1992. (Susan Stanton)

2. California Department of Food and Agriculture for the use of hexakis on watermelons to control spider mites; July 17, 1991, to October 15, 1991. (Andrea Beard)

3. California Department of Food and Agriculture for the use of cypermethrin on dry bulb onions to control thrips; July 5, 1991, to September 30, 1991. (Andrea Beard)

4. Florida Department of Agriculture and Consumer Services for the use of iprodione on tobacco to control target spot; July 18, 1991, to July 31, 1991. Florida had initiated a crisis exemption for this use. (Susan Stanton)

5. Illinois Department of Agriculture for the use of propiconazole on seed corn to control northern leaf blight and northen leaf spot; August 5, 1991, to August 31, 1991. (Jim Tompkins)

6. Minnesota Department of Agriculture for the use of mancozeb on sunflowers to control sunflower rust; August 9, 1991, to August 31, 1991. (Jim Tompkins)

7. Minnesota Department of Agriculture for the use of triclopyr on aquatic sites to control lythrum salicaria; August 9, 1991, to December 1, 1991. (Jim Tompkins)

8. Montana Department of Agriculture for the use of chlorpyrifos on barley to control Russian wheat aphids; July 8, 1991, to November 1, 1991. (Andrea Beard)

9. North Dakota Department of Agriculture for the use of propiconazole on oats to control crown rust (*Puccinia Coronater*); July 5, 1991, to July 31, 1991. (Jim Tompkins)

10. Pennsylvania Department of Agriculture for the use of vinclozolin on snap beans to control gray and white mold; August 9, 1991, to October 31, 1991. (Libby Pemberton)

11. South Dakota Department of Agriculture for the use of chlorpyrifos on wheat to control cutworms; July 8, 1991, to December 15, 1991. South Dakota had initiated a crisis exemption for this use. (Andrea Beard)

12. Texas Department of Agriculture for the use of propiconazole on celery to control early blight; August 1991, to April 1992. (Jim Tompkins)

13. Washington Department of Agriculture for the use of bifenthrin on strawberries to control root weevils; August 14, 1991, to September 30, 1991. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Texas Department of Agriculture on June 27, 1991, for the use of triadimefon on cotton to control cotton rust. This program is expected to last until October 31, 1991. (Susan Stanton)

2. Texas Department of Agriculture on August 1, 1991, for the use of cyromazine on peppers to control vegetable leafminers. This program is expected to last until July 31, 1992. (Susan Stanton)

EPA has denied specific exemption requests from the Oklahoma and Texas Departments of Agriculture for the use of DCNA (Botran) on peanuts to control sclerotinia blight. The Agency has denied the requests because of the lack of progress toward registration and the determination that the economic situation appears less grave than it was previously thought to be. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: October 9, 1991.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

[FR Doc. 91-29937 Filed 12-13-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL 4083-1]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Eager Beaver Lumber Company Superfund Site in Townville, Pennsylvania was executed by the Agency on October 31, 1991. The settlement resolves an EPA claim under section 107 of CERCLA against the Eager Beaver Lumber Company, *et al.* The settlement requires the settling party to pay $213,241.50 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency

will receive written comments relating to the settlement. The Agency's response to comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, Regional Docket Clerk, (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before January 15, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA, 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, U.S. EPA Region III Docket Clerk (3RC00), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA, 19107. Comments should reference the Eager Beaver Lumber Company Superfund Site, Crawford County, Pennsylvania; EPA Docket No. III–91–68–DC; and be addressed to Suzanne Canning, U.S. EPA Region III Docket Clerk, at the above address.

FOR FURTHER INFORMATION CONTACT: Pamela Lazos, Assistant Regional Counsel, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone: (215) 597–8504.

Dated: December 6, 1991.

Edwin B. Erickson,

Regional Administrator, United States Environmental Protection Agency, Region III.

[FR Doc. 91–29955 Filed 12–13–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59926; FRL 4008–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 3 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–67, 92–68, December 17, 1991.

Y 92–69, December 22, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, r. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–67

Manufacturer. Henkel Corporation.

Chemical. (S) Adipic acid and phthalic anhydride, polymer with propylene glycol hydropentated coco fatty acid ester.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000–2,000,000 kg/yr.

Toxicity Data. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

Y 92–68

Manufacturer. Henkel Corporation.

Chemical. (G) Nonandeioc acid estered with neopenyl glycol and 2-ethyl-1-hexanol.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 200,000–400,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat).

Y 92–69

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Coating. Prod. range: Confidential.

Dated: December 9, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–29938 Filed 12–13–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–51779; FRL 4007–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 31 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91–1217, October 9, 1991.

P 92–232, January 22, 1992.

P 92–236, 92–237, 92–238, 92–239, 92–240, 92–241, 92–242, 92–243, 92–244, 92–245, 92–246, 92–247, 92–248, 92–249, 92–250, February 22, 1992.

P 92–251, February 29, 1992.

P 92–252, February 22, 1992.

P 92–253, 92–254, 92–255, 92–256, 92–257, 92–258, 92–259, 92–260, February 23, 1992.

P 92–261, 92–262, 92–263, 92–264, February 24, 1992.

Written comments by:

P 91–1217, September 9, 1991.

P 92–232, December 23, 1991.

P 92–236, 92–237, 92–238, 92–239, 92–240, 92–241, 92–242, 92–243, 92–244, 92–245, 92–246, 92–247, 92–248, 92–249, 92–250, January 23, 1992.

P 92–251, January 30, 1992.

P 92–252, January 23, 1992.

P 92–253, 92–254, 92–255, 92–256, 92–257, 92–258, 92–259, 92–260, January 24, 1992.

P 92–261, 92–262, 92–263, 92–264, January 25, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPTS–51779)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential

document is available in the TSCA Public Docket Office NE G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-1217

Importer. Dianal America, Inc.

Chemical. (S) 1,2-Cyclohexanedicarboxylic acid, mon(2-((2-methyl-1-oxo-2-propanyl)oxy)ethyl)oxy)ethyl)ester.

Use/Import. (S) Component of coating reson. Import range: 20,000–40,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/gk species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit). Mutagenicity: negative.

P 92-232

Manufacturer. Confidential.

Chemical. (G) Metal alkyl salicylate.

Use/Production. (G) Additive for engine oil. Prod. range: Confidential.

P 92-236

Manufacturer. Confidential.

Chemical. (S) Dicyclopentadiene, cyclic codimer, aromatic naphtha, soya oil, fatty acid reaction product.

Use/Production. (S) Printing ink. Prod. range: 135,000–225,000 kg/yr.

P 92-237

Importer. Confidential.

Chemical. (G) Spirocyclic alkane ketone.

Use/Import. (S) Ingredient of fragrance formulation. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 43 g/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Mutagenicity: negative. Skin irritation: slight species (rabbit).

P 92-238

Importer. Confidential.

Chemical. (G) Acrylate functional polyurethane resin.

Use/Import. (G) Industrial coating. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 43 g/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Mutagenicity: negative. Skin irritation: slight species (rabbit).

P 92-239

Importer. Confidential.

Chemical. (G) Diphenate.

Use/Import. (G) Dispersive use. Import range: Confidential.

P 92-240

Manufacturer. Confidential.

Chemical. (G) Aluminum(ethyl 3-oxobutanoato-O1,O3)bis(2-propanola)-, (T-4)-reaction products with alcohols, C_{11}-C_{14}-rich, and phenolic resin.

Use/Production. (S) Intermediate for manufacture of ink vehicles. Prod. range: Confidential.

P 92-241

Manufacturer. The Dow Chemical Company.

Chemical. (G) Thermoplastic polyurethane elastomer resin.

Use/Production. (G) Open, nondispersive. Prod. range: 1,362,000–2,270,000 kg/yr.

P 92-242

Manufacturer. The Dow Chemical Company.

Chemical. (G) Thermoplastic polyurethane elastomer resin.

Use/Production. (G) Open, nondispersive. Prod. range: 1,362,000–2,270,000 kg/yr.

P 92-243

Manufacturer. Confidential.

Chemical. (G) Diene copolymers.

Use/Production. (G) General purpose liquid elastomer. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: slight species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit).

P 92-244

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-245

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-246

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four

strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-247

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-248

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-249

Manufacturer. Mycon Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-250

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego*.

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50

is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-251

Manufacturer. Mycogen Corporation.

Chemical. (G) Eight *Pseudomonas fluorescens* strains, each strain is modified to contain a *delta* endotoxin gene. Four strains have a *delta* endotoxin gene from *Bacillus* thuringiensis variety *kurstaki* and four strains have the *delta* endotoxin gene from *Bacillus thuringiensis morrisoni* variety *san diego.*

Use/Production. (S) The PMN microorganisms are agricultural pesticide intermediates that produce and accumulate delta endotoxin intracellularly during growth under controlled conditions in a fermenter. Encapsulated *delta* endotoxins are protected from the elements and have extended residual activity. Prod. range: Confidential.

Exposure. Workers who maintain and process cultures of the microorganisms in the production areas.

Toxicity Data. Pathological and toxicologic studies were conducted to evaluate health effects in mammals with two of the eight PMN strains. These studies were conducted with modified microorganisms that had been killed. The results are acute oral toxicity LD50 is > 5050 mg/kg in rats; acute dermal toxicity LD50 is > 2020 mg/kg in rabbits; acute pulmonary toxicity LD50 is > 10×10^{10} cells/animal in rats; acute intravenous toxicity LD50 is > 10^7 cells per animal in rats; not a primary dermal irritant in rabbits; minimal eye irritantion in rabbits; and slight sensitizer in guinea pigs.

Environmental release/disposal. At the end of the growth process and prior to their removal from the fermenter, the cells are killed and fixed.

P 92-252

Manufacturer. Confidential.

Chemical. (S) An isophthalic acid, adipic acid, neopentyl glycol, 1,6 hexanediol, trimethylol propane polyester reacted with a methoxy functional methyl phenylpolysiloxane silicone.

Use/Production. (S) Paint component. Prod. range: 120,000–180,000 kg/yr.

P 92-253

Manufacturer. The Dow Chemical Company.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for polyester fibers. Prod. range: Confidential.

P 92-254

Manufacturer. The Dow Chemical Company.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for polyester fibers. Prod. range: Confidential.

P 92-255

Manufacturer. The Dow Chemical Company.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for polyester fibers. Prod. range: Confidential.

P 92-256

Manufacturer. Confidential.

Chemical. (G) Poly(butadiene) copolymer latex.

Use/Production. (G) Additive in coating composition. Prod. range: 20,000–200,000 kg/yr.

P 92-257

Manufacturer. Confidential.

Chemical. (G) Poly(butadiene) copolymer latex.

Use/Production. (G) Additive in coating composition. Prod. range: 20,000–200,000 kg/yr.

P 92-258

Manufacturer. Milliken & Company.

Chemical. (G) Polyoxyalkaline acetate ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-259

Manufacturer. Milliken & Company.

Chemical. (G) Substituted polyoxyalkalene-*M*-toluidine.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-260

Manufacturer. Milliken & Company.

Chemical. (G) Polymeric colorant.

Use/Production. (G) Colorant. Prod. range: Confidential.

P 92-261

Importer. Henkel Corporation.

Chemical. (G) Alkyl glycerides.

Use/Import. (G) Plastic additive. Import range: Confidential.

Toxicity Data. Static acute toxicity: LC50 > 100 mg/l species (golden orfe).

P 92-262

Importer. Henkel Corporation.

Chemical. (G) Alkyl glycerides.

Use/Import. (G) Plastic additive. Import range: Confidential.

Toxicity Data. Static acute toxicity: LC50 > 100 mg/l species (golden orfe).

P 92-263

Importer. Confidential.

Chemical. (G) Phenol, 1-phenylethyl; phenol, bis(1-phenylethyl)-; phenol,2,4,6-tris(1-phenylethyl)-,; oxirane.

Use/Import. (S) Surfactant for durable water repellant articles. Import range: Confidential.

Toxicity Data. Static acute toxicity: LC50 2.8 ppm 48H species (brocade carp).

P 92-264

Importer. Confidential.

Chemical. (G) Adipic acid polymer.

Use/Import. (S) Binder for glass fiber. Import range: 3,000–60,000 kg/yr.

Dated: December 9, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-29939 Filed 12-13-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

[DA 91-1520]

December 10, 1991.

January 28, 1992, 10:30 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Minutes of Last Meeting.
3. Report of Working Party 1, Policy and Regulation.
4. Report of Working Party 2, Transition Scenarios.
5. General Discussion.
6. Other Business.
7. Date and Location of Next Meeting.
8. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of

the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to George Vradenburg III at (213) 203–1334, Dr. James J. Tietjen at (609) 734–2237, or Gina Harrison at (202) 632–7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–29921 Filed 12–13–91; 8:45 am]

BILLING CODE 6712-01-M

[Gen Docket No. 90–119; DA 91–1488]

Private Land Mobile Radio Services; Florida Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order amending the Public Safety Radio Plan for Florida (Region 9). As a result of accepting the amendment for the Plan for Region 9, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 25, 1991.

Released: December 5, 1991.

By the Chief, Land Mobile and Microwave Division and the Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Florida (Region 9) Public Safety Plan (Plan) on May 10, 1990, FCC Rcd 3067 (1990).

2. By letter dated September 13, 1991, the Region proposed to amend its Plan. The proposed amendment would revise the current channel allotments to correspond to its current database and update tables contained in the plan. The Commission placed the letter on Public Notice for comments, 56 FR 49183 (September 27, 1991), and received no comments.

3. We have reviewed the proposed amendment to the Region 9 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

a. Accordingly, it is Ordered, That the Public Safety Radio Plan for Florida (Region 9) is Amended, as set forth in the Region's letter of September 13, 1991. This Amendment is effective immediately.

Federal Communications Commission.

Richard J. Shiben,

Chief, Land Mobile & Microwave Division.

[FR Doc. 91–29924 Filed 12–13–91; 8:45 am]

BILLING CODE 6712-01-M

Low Power Television and Television Translator Filing Window From February 10, 1992, Through February 14, 1992

AGENCY: Federal Communications Commission.

ACTION: Notice of filing window.

SUMMARY: This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. The filing window will be subject to certain geographic restrictions on the filing of applications for new low power television and television translator station construction permits. This notice sets forth the geographic restrictions and the filing procedures, including when and where to file and the applicable application form to be used, and information concerning application filing fees.

DATES: February 10, 1992, through February 14, 1992.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau (202) 632–3894.

SUPPLEMENTARY INFORMATION:

Released: December 9, 1991.

Commencing February 10, 1992, and continuing to and including February 14, 1992, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. All of these applications must be filed at the Pittsburgh, Pennsylvania locations specified herein.

This filing window is subject to geographic restrictions on the filing of applications for new station construction permits. The Commission will permit only new station applications that specify transmitting antenna site coordinates (geographic latitude and longitude) located more than 161 kilometers (100 miles) from the reference coordinates of the cities listed in Attachment I to this Notice. These restrictions are necessitated by the Commission's proceeding on Advanced Television Systems (ATV) and the large number of low power television and television translator stations already authorized in and around these metropolitan areas.[1]

Applications for new stations that specify sites within the restricted areas, except as provided below, will be considered unacceptable for filing and will be returned to applicants without refund of any fee required to be submitted with their applications. The Commission will consider requests for waiver of the geographic restrictions based on terrain shielding. Such waivers will be granted only in cases where applicants demonstrate that their proposed facilities are completely shielded by terrain barriers from the applicable television market areas.[2] The

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[1] In 1987, the Commission imposed a freeze on full-service television applications and allotments in the vicinity of these urban areas. 52 FR 28346 (July 29, 1987). This freeze did not apply to low power TV and TV translator applications. The Commission then reasoned that, because of their secondary status, continued authorizations of these stations would not restrict its spectrum planning options in the ATV proceeding. See also First Report and Order in the ATV proceeding, MM Docket No. 87–268, 5 FCC Rcd 5627 (1990). Since then, however, numerous low power TV and TV translator stations have been authorized in and around these urban areas; areas for which available broadcast spectrum for future ATV systems is most limited. It is possible that some of these secondary stations may be displaced in channel if and when the spectrum is needed by full-service TV stations for ATV use. The restriction against additional new stations in and around these urban areas is intended to minimize the extent to which low power TV and TV translator service to the public may be disrupted. In this regard, low power TV and TV translator stations continue to have secondary status with regard to the introduction of ATV service. The geographic restrictions herein are comparable to those imposed in the 1987 television freeze; taking into account the typical differences in levels of full-service TV and low power TV station operating power.

[2] Through this extension of the Commission's policy on terrain shielding (See Policy Statement, 3 FCC Rcd 2664, reconsideration granted in part, 3 FCC Rcd 7105 (1988)), opportunities will not be foreclosed for additional low power TV and TV translator service in locales that are completely insulated from the applicable urban TV markets due to substantial terrain obstructions; for example, large mountain ranges in the Western States. Requests for terrain-related waivers must be supported by detailed profiles of the terrain in all pertinent directions toward the applicable urban market areas. Profiles should be prepared in accordance with the guidelines given in the Commission's terrain Policy Statement. In the context of geographic filing restrictions, the scope of terrain shielding waivers will not be limited to those applications that are not mutually exclusive with other applications. Prospective applicants are cautioned that such waivers will not be granted in cases where proposed facilities are only partially shielded from the listed market areas or in cases of marginal terrain shielding; for example, due to rolling hills.

spectrum requirements for ATV systems will weigh heavily against the granting of requests for waiver of the restrictions based on reasons other than terrain shielding.

Geographic restrictions will not apply to the filing of applications for major changes in authorized facilities or in construction permit applications now pending at the Commission. Major change applications may be filed in this window for all station locations.[3]

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the February 10–February 14, 1992, window. This restriction does not apply to major change applications.

All applications must be "complete and sufficient" when tendered for filing, in accordance with section 73.3564 of the Commission's Rules. As noted below, a fee of $425.00 must accompany each application. Further, applicants filing during this window period must use the February 1988 edition of FCC Form 346.[4] See 53 Fed. Reg. 15225 (April 28, 1988). Applicants required to pay and submit a fee with their applications must complete and attach to their original applications the fee processing form (FCC Form 155). Applications filed on obsolete editions of Form 346 or, where applicable, omitting the form 155 will be returned as defective and unacceptable for filing. FCC Forms 346 and 155 can be obtained by calling the FCC's Forms Distribution Center at Telephone No. (202) 632–FORM and leaving your request on the answering machine provided for this purpose.

In this window application filing process, the Commission will utilize the facilities of a Treasury Department lockbox bank. Window application filings can be made, either by mail or in person, at the following locations only:

If mailed—Federal Communications Commission, Low Power Television Window Filing, P.O. Box 358992, Pittsburgh, PA 15251–5992.

If hand-delivered—Federal Communications Commission, Low Power Television Window Filing, c/o Mellon Bank, One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA 15258, Attn: Wholesale Lockbox Shift Supervisor.

Mailed applications must be actually received no later than February 14, 1992. Hand-carried or couriered applications can be delivered at the One Mellon Bank Center location at any time during the window period up through 11:59 p.m. on Friday, February 14, 1992. Submissions tendered after 11:59 p.m. on Friday, February 14, 1992, will not be accepted. Detailed instructions to get to this location are included in this Public Notice as Attachment II.

Caution: One Mellon Bank Center is not the customary address for filing applications requiring a fee. This location has been established to accommodate this filing window. Do not deliver Low Power Television/Television Translator window applications to any other location!

These applications will not be accepted at any other Mellon Bank Center facility. Window application filings will not be accepted at the offices of the Federal Communications Commission in Washington, DC.

An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts will not be provided by the lockbox bank facility. However, for mailed window application filings, a "return copy" of the application can be furnished provided the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. For hand-carried or couriered applications delivered to the One Mellon Bank Center location, bank personnel, if requested in person, will date stamp as received a proffered copy of the application and return it to the requester. Only one piece of paper per individual application (*i.e.*, an original and two copies) will be stamped for receipt purposes.

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required to pay and submit a fee with the filing of the application. A separate fee payment of $425.00, attached (but not stapled) to the fee processing form (FCC Form 155) of each original application, must be submitted for each new station or major change application filed during this window. Applicants required to submit the fee processing form are instructed to enter "MOL" as the Fee Type Code in response to Column (A) of section I of that form. The Fee Multiple for applicants in this low power television window is "0001" and that number should be entered in Column (B), section I, FCC Form 155. A single fee payment for multiple applications will not be accepted.

Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S. financial institution. No postdated, altered or third-party checks will be accepted. Do not send cash.

Applications submitted without a required fee processing form, with insufficient or inappropriate payments, or without any payments will be dismissed and returned to the applicant without processing. See § 1.1107 of the Commission's Rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," or filed on an obsolete edition of the FCC Form 346 will be rejected and returned to the applicant.

Governmental entities are exempt from the $425.00 fee. As defined by the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." Also exempted from this fee are noncommercial educational FM and full-service television broadcast station licensees seeking to make major changes in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. A licensee or permittee of a low power television or television translator

[3] The need for major changes in authorized facilities often is compelled by unforeseen and unavoidable circumstances, such as the loss or unsuitability of a station's antenna site. Commission authorization of such changes may be vital to preserving an existing low power TV or TV translator service. Allowance for major changes also will facilitate the construction and operation of unbuilt and planned stations for which considerable resources may have been expended. Fairness dictates that station projects now underway be given the opportunity to be completed.

[4] OMB has approved a revised Form 346. However, since the revised form is not yet available, the February 1988 edition of Form 346 remains in use.

station, which is filing a major change application and which earlier obtained either a fee refund because of a NTIA facilities grant for that station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of section 73.621 of the Commission's Rules, is similarly exempt from payment of the $425.00 fee. See section 1.1112 of the Commission's Rules. To avail itself of any fee exemption an applicant must indicate its eligibility by checking the most appropriate box on page 1 of FCC Form 346 (February 1988 edition). Fee exempt low power television/television translator window applications must also be filed in Pittsburgh. For fee-exempt applicants only, a Form 155 need not be submitted.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at Telephone No. (202) 632-3894.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Attachment I

REFERENCE COORDINATES FOR AREAS NOT ELIGIBLE FOR NEW STATION APPLICATIONS (SOURCE OF COORDINATES: SECTION 76.53 OF FCC RULES)

	(Degrees-minutes-seconds)	
	Latitude	Longitude
New York, NY	40-45-06	73-59-39
Los Angeles, CA	34-03-15	118-14-28
Chicago, IL	41-52-28	87-38-22
Philadelphia, PA	39-56-58	75-09-21
San Francisco, CA	37-46-39	122-24-40
Boston, MA	42-21-24	71-03-25
Detroit, MI	42-19-48	83-02-57
Dallas, TX *	32-47-09	96-47-37
Ft Worth, TX *	32-44-55	97-19-44
Washington, DC	38-53-51	77-00-33
Houston, TX	29-45-26	95-21-37
Cleveland, OH	41-29-51	81-41-50
Pittsburgh, PA	40-26-19	80-00-00
Seattle, WA *	47-36-32	122-20-12
Tacoma, WA *	47-14-59	122-26-15
Miami, FL	25-46-37	80-11-32
Atlanta, GA	33-45-10	84-23-37
Minneapolis, MN *	44-58-57	93-15-43
St Paul, MN *	44-56-50	93-05-11
Tampa, FL *	27-56-58	82-27-26
St Petersburg, FL *	27-46-18	82-38-16
Saint Louis, MO	38-37-45	90-12-22
Denver, CO	39-44-58	104-59-22
Sacramento, CA *	38-34-57	121-29-41
Stockton, CA *	37-57-30	121-17-16
Indianapolis, IN	39-46-07	86-09-46
Hartford, CT *	41-46-12	72-40-49
New Haven, CT *	41-18-25	72-55-30
Portland, OR	45-31-06	122-40-35
Milwaukee, WI	43-02-19	87-54-15
Cincinnati, OH	39-06-07	84-30-35
Kansas City, MO	39-04-56	94-35-20
Charlotte, MO	35-13-44	80-50-45
Nashville, TN	36-09-33	86-46-55
Columbus, OH	39-57-47	83-00-17

REFERENCE COORDINATES FOR AREAS NOT ELIGIBLE FOR NEW STATION APPLICATIONS (SOURCE OF COORDINATES: SECTION 76.53 OF FCC RULES)—Continued

	(Degrees-minutes-seconds)	
	Latitude	Longitude
New Orleans, LA	29-56-53	90-04-10

* City is part of a hyphenated television market.

Attachment II

Directions to One Mellon Bank Center

From Greater Pittsburgh International Airport and Interstate 79: Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh. Go through the Fort Pitt tunnels and across the Fort Pitt Bridge. Follow signs to Parkway East (Monroeville). Travel approximately ¼ of a mile to the Grant Street Exit (Exit 3). Proceed on Grant Street to One Mellon Bank Center. The street address is 500 Grant Street. Enter building at designated entrance and follow signs.

From Pennsylvania Turnpike: Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3). Proceed on Grant street to One Mellon Bank Center. The street address is 500 Grant Street. Enter building at designated entrance and follow signs.

Parking: Parking is available in several parking garages which are within two blocks of One Mellon Bank Center. Chatham Garage is located on Fifth Avenue; and Mellon Square Garage is on Sixth Avenue (across from the Alcoa Building). There is also a loading area located behind One Mellon Bank Center on Ross Street.

[FR Doc. 91-29925 Filed 12-13-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 91-56]

American Commercial Barge Line Co., et al. v. South Louisiana Port Commission; Filing of Complaint and Assignment

Notice is given that a complaint filed by American Commercial Barge Line Co., American River Transportation Co., Cargill Marine & Terminal, Inc., Conticarriers and Terminals, Inc., Dixie Carriers, Inc., Hollywood Marine, Inc., Ingram Barge Co., Marine Equipment Management Corp., National Marine, Inc., Orgulf Transport Co., Riverway Company, and the Valley Line Co. ("Complainants") against The South Louisiana Port Commission ("Respondent") was served December 10, 1991. Complainants allege that Respondent engaged in violations of sections 16 and 17 of the Shipping Act, 1916, 46 U.S.C. app. 816 and 817 (sic) and section 9 (sic) of the Shipping Act of 1984, 46 U.S.C. app. 1709, by imposing fees that were unrelated to benefits conferred and that were unjustly discriminatory in favor of local interests.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence with the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 10, 1992, and the final decision of the Commission shall be issued by April 9, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-29918 Filed 12-13-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

SouthTrust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 6, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of Georgia, N.A., Atlanta, Georgia, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. F.S.B. Bancorporation, Inc., Employee Stock Ownership Plan, Fort Morgan, Colorado; to become a bank holding company by increasing its ownership to 25.42 percent of the voting shares of F.S.B. Bancorporation, Inc., Fort Morgan, Colorado, and thereby indirectly acquire Farmers State Bank, Fort Morgan, Colorado.

Board of Governors of the Federal Reserve System, December 10, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29900 Filed 12-13-91; 8:45 am]

BILLING CODE 6210-01-F

James Hollis Vincent; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 6, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. James Hollis Vincent, Yuma, Colorado; to acquire 12.8 percent of the voting shares of Washington Investment Company, Otis, Colorado, and thereby indirectly acquire The First National Bank of Otis, Otis, Colorado.

Board of Governors of the Federal Reserve System, December 10, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29901 Filed 12-13-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112591 AND 120691

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Henkel KGaA, Ecolab Inc., Ecolab Inc	92-0157	11/25/91
Associated Insurance Companies, Inc., Allegheny Corporation, The Shelby Insurance Company	92-0186	11/25/91
Hajoca Corporation, Florida Progress Corporation, Gorman Co., Inc	92-0206	11/25/91
United HealthCare Corporation, Academy of Medicine of Columbus and Franklin County, Physicians Health Plan Corporation	92-0208	11/25/91
Hanson PLC, Beazer PLC, Beazer PLC	92-0037	11/26/91
Journal Communications, Inc., NorLight, NorLight	91-1487	11/27/91
Koch Industries, Inc., Ashland Oil, Inc., Scurlock Permian Corporation	92-0122	11/27/91
Unocal Corporation, Royal Dutch Petroleum Company, Shell Oil Company	92-0124	11/27/91
VEBA AG, ENSERCH Corporation, Ensearch Netherlands, Inc	92-0125	11/27/91
R.E. Turner, HB Holding Co., HB Holding Co	92-0129	11/27/91
Great American Communications Company, American Financial Corporation, Worldvision Enterprises, Inc	92-0133	11/27/91
American Financial Corporation, Great American Communications Company, Great American Broadcasting Company	92-0134	11/27/91
Land Free II Investment Limited, Great American Communications Company, The Great American Entertainment Co., Inc	92-0135	11/27/91
Land Free II Investment Limited, HB Holding Co., HB Holding Co	92-0136	11/27/91
Parker & Parsley Petroleum Company, Mobil Corporation, Mobil Producing Texas & New Mexico Inc	92-0187	11/27/91
General Motors Corporation, Energy Management Associates, Inc., Energy Management Associates, Inc	92-0198	11/27/91
Florida Construction, Commerce & Industry Self Ins. Fund, The Florida Employers Insurance Company, The Florida Employers Insurance Company	92-0199	11/27/91
Edward W. Rose, III, The LTV Corporation, LTV Aerospace and Defense Company	92-0205	11/27/91
Mitsubishi Corporation, Texas Meridian Resources Corporation, Texas Meridian Resources Corporation	92-0142	11/29/91
Robert O'Leary and Madeleine O'Leary, Chevron Corporation, Chevron Geothermal Company of California	92-0156	11/29/91
Mezzanine Lending Associates II, L.P., Golden State Foods Corp., Golden State Foods Corp	92-0172	11/29/91
Sumitomo Corporation, H.B. Pearl, Phoenixcor Holdings, Inc	92-0193	11/29/91
Sumitomo Corporation, Barings plc, Phoenixcor Holdings Inc	92-0200	11/29/91
American Home Products Corporation, Betty Ann Killingsworth, Knapp-Sherrill Company	92-0201	11/29/91
Marmac Corporation, Nortek, Inc., L.J. Smith, Inc	92-0112	12/02/91
Comerica Incorporated, Stanley Stahl, Apple Acceptance Corp	92-0213	12/02/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112591 AND 120691—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Time Warner Inc., S.F. Holdings, Inc., S.F. Holdings, Inc	92-0220	12/02/91
Blackstone Capital Partners, L.P., Time Warner Inc., SFCA Acquisition Corp. and Six Flags Corp	92-0225	12/02/91
Mr. Lowell W. Paxson, Gannett Testamentary Trust c/o Guy Gannett Publishing, Guy Gannett Publishing Co	92-0226	12/02/91
The Trust for the Int'l. Brotherhood of Electrical, Electrical Workers' Benefit Association, Electrical Workers' Benefit Association	92-0227	12/02/91
Media/Communication Partners Limited Partnership, WTVG, Inc., WTVG, Inc	92-0229	12/02/91
National City Corporation, Ford Motor Company, First Nationwide Bank and Cardinal Federal Savings Bank	92-0230	12/02/91
Chevron Corporation, Royal Dutch Petroleum Company, Shell Oil Company	92-0158	12/03/91
Manifattura Lane Gaetano Marzotto & Figli S.p.A., Leyton Co., K.K., Leyton House GmbH and/or Hugo Boss, AG	92-0161	12/03/91
Enron Corp., Chevron Corporation, Chevron U.S.A. Inc	92-0202	12/03/91
ServiceMaster Limited Partnership, Guy W. Millner, Norrell Corporation	92-0233	12/03/91
Arthur M. Goldbert, Sysco Corporation, Sysco Corporation	92-0127	12/04/91
MOS Electronics Taiwan, Inc., Vitelic Corporation, Vitelic Corporation	92-0163	12/04/91
J.R. Simplot Company, Matt Meyer, Arpin Dairy, Inc	92-0184	12/04/91
Unocal Corporation, The St. Paul Companies, Inc., St. Paul Oil and Gas Corporation	92-0194	12/04/91
Fukutake Publishing Co., Ltd., Maxwell Communication Corporation plc, Berlitz International, Inc	92-0203	12/04/91
Alberta Energy Company Ltd., Chevron Corporation, Chevron U.S.A. Inc	92-0211	12/04/91
UtiliCorp United Inc., Royal Dutch Petroleum Company, Shell Western E&P Inc	92-0216	12/04/91
Sonat Inc., Chevron Corporation, Chevron U.S.A. Inc	92-0223	12/06/91
Chevron Corporation, Sonat Inc., Sonat Inc	92-0224	12/06/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-29980 Filed 12-13-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 921 0014]

Hanson PLC, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, Hanson and its subsidiary to acquire Beazer PLC, with certain stipulations, and would allow Cencal Cement Company to be operated independently of Hanson under a hold separate agreement until it is sold.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Hanson PLC ("Hanson") and H B Acquisitions PLC ("HBA"), an indirect, wholly-owned subsidiary of Hanson (hereinafter collectively referred to as "Hanson") of substantially all of the voting securities of Beazer PLC ("Beazer"), and it now appearing that Hanson and HBA, (hereinafter sometimes referred to as "proposed respondents"), are willing to enter into an Agreement Containing Consent Order ("agreement") to divest certain ownership interest in Ssangyong/Riverside Ltd., a California general partnership d/b/a Cencal Cement Company ("Cencal"), and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between Hanson, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Hanson PLC is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at 1 Grosvenor Place, London SW1X 7JH, England. Hanson's indirect, wholly-owned subsidiary, H B Acquisitions PLC ("HBA"), is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at 1 Grosvenor Place, London SW1X 7JH, England.

2. Beazer PLC is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at Lower Bristol Road, Bath Avon BA2 3EY, England.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint hereto attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement, and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider

appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint hereto attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint hereto attached and its decision containing the following Order to divest and to cease and desist, in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Hanson Industries, 99 Wood Avenue South, Iselin, New Jersey 08830, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the agreement or the Order may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties and other relief in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

A. Hanson means Hanson PLC and H B Acquisitions PLC, their successors and assigns, directors, officers, employees, agents, and representatives, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Hanson PLC or H B Acquisitions PLC and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. Acquisition means the acquisition by Hanson and HBA of substantially all of the voting securities of Beazer.

C. *Cencal* means the California general partnership joint venture, Ssangyong/Riverside Ltd. d/b/a Cencal Cement Company, which is owned in equal part by Ssangyong Cement (Pacific), Inc., a California corporation, and Riverside Cement (Pacific), Inc., a Delaware corporation.

D. *The Cencal interest* means Hanson's ownership interest in Cencal, the owner of a deep-sea import terminal located at the Port of Stockton, California.

E. *Cement* means portland cement, a chemical combination of calcium, silica, alumina, iron ore, and small amounts of other materials which is made by quarrying, crushing, and grinding the raw materials, burning them in huge rotary kilns at extremely high temperatures and finely grinding the resulting marble-sized pellets with gypsum into an extremely fine, usually gray, powder.

II

It is ordered That:

A. Within twelve (12) months of the date this Order becomes final, Hanson shall divest, absolutely and in good faith, the Cencal interest.

B. Within sixty (60) days of the date this Order becomes final, Hanson shall exercise its right under Section 15.1 of the Joint Venture Agreement of Ssangyong/Riverside Ltd. ("JV Agreement"), attached hereto as Exhibit A, to give Ssangyong a Buy-Sell Notice under the JV Agreement for the purpose of divesting its interest in Cencal to Ssangyong.

1. If Ssangyong acquires Hanson's interest in Cencal for cash only without additional covenants or restrictions, then Hanson is not required to seek the prior approval of the Commission for such divestiture; however, if consideration to acquire Cencal is not for cash only, or if Hanson requires additional covenants or restrictions for its divestiture of Cencal to Ssangyong, then such divestiture shall be subject to the prior approval of the Commission.

2. If Ssangyong declines to acquire Hanson's interest in Cencal and Hanson, by operation of the Buy-Sell Option of JV Agreement, acquires Ssangyong's fifty (50) percent interest in Cencal, then:

(a) Hanson is not required to seek the prior approval of the Commission for that acquisition under Paragraph V. of this Order;

(b) Hanson shall divest its entire interest in Cencal, including the interest acquired from Ssangyong, within the time provided by Paragraph II.A.; and

(c) Hanson shall hold separate the interest acquired from Ssanagyong under the same terms and condition as provided in Paragraph II.D.

C. The divestiture shall be only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Cencal interest is to ensure the continuation of Cencal as a viable deep-sea import terminal, engaged in the same businesses in which they are presently employed, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

D. Hanson shall comply with all terms of the Agreement To Hold Separate ("Hold Separate"), attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue to be in effect until such time as the Hold Separate provides.

E. Hanson shall take such action as is necessary to maintain the viability and marketability of the Cencal interest and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the Cencal assets except in the ordinary course of business and except for ordinary wear and tear, acts of God or Force Majeure.

III

It is further ordered That:

A. If Hanson has not divested, absolutely and in good faith and with the Commission's prior approval, the Cencal interest within 12 months after the date this Order becomes final, Hanson shall consent to the appointment by the Commission of a trustee to divest the Cencal interest. In the event the Commission or the Attorney General brings an action pursuant to Section 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. § 45 (*1*), or any other statute enforced by the Commission, Hanson shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil

penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Hanson to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Hanson shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Hanson, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Cencal interest.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or by the court (in the case of a court-appointed trustee); provided, however, the Commission may only extend the trustee's divestiture period one time for such time as the trustee may request, not to exceed one (1) additional year.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Cencal interest, or any other relevant information as the trustee may request. Hanson shall develop such financial or other information as such trustee may request and shall cooperate with any request of the trustee. Hanson shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Hanson shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Hanson's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II.B. of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer of the Cencal interest. The divestiture shall be made in the manner set out in Paragraph II.; provided, however, if the trustee receives bona fide offers from more than one prospective acquirer or acquirers, and if the Commission approves more than one such proposed acquirer, the trustee shall divest to the acquirer selected by Hanson from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Hanson, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Hanson, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Hanson and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Cencal interest.

7. Hanson shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-apponted trustee, of the court, Hanson shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture in accordance with this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture in accordance with this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Cencal interest.

12. The trustee shall report in writing to Hanson and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is Further ordered That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Hanson has fully complied with the provisions of Paragraphs II. and III. of this Order, Hanson shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Hanson shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Hanson also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V

It is further ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, Hanson shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, or otherwise:

(1) Any assets engaged in, used for, or previously used for (and still suitable for); or

(2) Any interest in, or the whole or any part of the stock or share capital of any entity that owns or operates assets engaged in, used for, or previously used for (and still suitable for)

the manufacture, sale, shipment or distribution of cement in the area of Northern California comprised of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shata, Lassen, Mendocino, Tehama, Glenn, Butte, Plumas, Lake, Colusa, Sutter, Yuba, Sierra, Nevada, Placer, Sonoma, Napa, Yolo, Solano, Sacra, El Dorado, Marin, Amador, Alpine, Contra Costa, San Joaquin, Alameda, Calaveras, Tuolumne, Mono, San Francisco, San Mateo, Santa Clara, Stanislaus, Santa Cruz, Merced, Mariposa, Monterey, San Benito, Fresno, Madera, Inyo, Tulare, and Kings counties, other than assets acquired in

the ordinary course of business for the manufacture, sale, shipment or distribution of cement at Kaiser's Permanente plant; provided, however, that it shall not be a violation of this Paragraph V. if Hanson acquires, through the operation of the so-called Buy-Sell Option of Paragraph XV. of the Joint Venture Agreement of Ssangyong/Riverside Ltd., the fifty (50) percent interest currently owned by Ssangyong Cement (Pacific) Inc., provided that, if Hanson does acquire such interest, it will divest it and all such interest in the joint venture within the time period prescribed by Paragraph II. of this Order. One year from the date this Order becomes final and annually thereafter for nine years, Hanson shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this Paragraph.

VI

It is further ordered That, acquisitions resulting in an interest of not more than three (3) percent of the outstanding voting securities of publicly traded companies, solely for the purpose of investment, are not subject to Paragraph V. of this Order;

VII

It is further ordered That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any itnerest in assets located in the northern California market, nor is engaged in the manufacture, sale, shipment or distribution of cement to such area (hereinafter "acquired entity"), Hanson announces its intention to acquire or commences an acquisition of any interest in the acquired entity and, before Hanson obtains sufficient control of the acquired entity to prevent an acquisition by the acquired entity, such acquired entity acquires any of the outstanding stock or share capital of, or any other interest in an entity that owns or operates assets used for the manufacture, sale, shipment or distribution of cement in such area (hereinafter "third entity"), or said acquired entity acquires any assets used in the manufacture, sale, shipment or distribution of cement in such area ("cement assets") or beings selling, shipping or distributing cement to such area, if approval of such acquisition would be required pursuant to Paragraph V, Hanson may, in lieu of obtaining prior approval of such acquisition under Paragraph V. in this Order, comply with each of the requirements of this Paragraph VII. of this Order. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to Paragraph V., Hanson shall:

A. Notify the Commission as soon as practicable, and in any event, within three (3) days of Hanson's learning of the acquisition by the acquired entity of any interest in a third entity, or of any cement assets, as described in Paragraph VI. of this Order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR Parts 801, 802 and 803.

B. In the case where the acquired entity acquired cement assets, Hanson shall comply with all terms of the Hold Separate, attached to this Order and made a part hereof. Provided, however, that each reference to "Cencal" in the Hold Separate shall, for purposes of this Paragraph VII., mean either the "stock or share capital of the third entity" or the "cement assets of the acquired entity." Said Hold Separate shall take effect as soon as Hanson has sufficient control over the acquired entity to satisfy the terms of the Hold Separate and shall continue in effect until such time as Hanson has divested all the cement assets acquired by the acquired entity or until such other time as the Hold Separate provides. In the case where the acquired entity acquired stock or share capital of the third entity, as soon as Hanson has sufficient control over the acquired entity to do so, Hanson shall place all stock and share capital of the third entity in a non-voting trust until said stock or share capital is divested.

C. Within six (6) months of the date when Hanson has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Hanson shall:

1. In the case where the acquired entity acquired stock or share capital of the third entity, divest, absolutely and in good faith, the stock or share capital of the third entity; or

2. In the case where the acquired entity acquired cement assets, divest, absolutely and in good faith, all the cement assets of the acquired entity and also divest such additional ancillary assets and effect such arrangements that are necessary to assure the viability and competitiveness of the cement assets of the acquired entity.

D. Hanson shall divest the stock or share capital of the third entity or the cement assets of the acquired entity only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the acquired entity acquired cement assets, Hanson shall demonstrate the viability and competitiveness of the cement assets of the acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture, sale, and/or shipment of cement, and to remedy any lessening of competition resulting from the acquisition.

E. In the case where the acquired entity acquired cement assets, Hanson shall take such action as is necessary to maintain the viability, competitiveness and marketability of the cement assets of the acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

F. If Hanson has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the third entity or the cement assets of the acquired entity within six (6) months of the date when Hanson has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Hanson shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the third entity; or

2. The cement assets of the acquired entity and to divest such additional ancillary assets of the acquired entity and effect such arrangements that may be necessary to assure the viability and competitiveness of the cement of the acquired entity.

G. In the case where the acquired entity commence shipping, selling or distributing of cement in the northern California market upon acquiring control, Hanson shall the acquired entity to cease and desist such activity.

H. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Hanson shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this

Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Hanson to comply with this Order.

I. If a trustee is appointed by the Commission or a court pursuant to Paragraph VII.F. of this Order, Hanson shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in Paragraph III.B. of this Order. Provided, however, that each reference to "Cencal" in Paragraph III.B. of this Order shall, for the purposes of this Paragraph VII., mean either the "stock or share capital of the third entity" or the "cement assets of the acquired entity."

VIII

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Hanson, Hanson shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Hanson relating to any matters contained in this Consent Order; and

B. Upon five (5) days notice to Hanson, and without restraint or interference from Hanson, to interview officers or employees of Hanson, who may have counsel present, regarding such matters.

IX

It is further ordered That, Hanson shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution, or sale of subsidiaries, or any other change that may affect compliance obligations arising out of the Order.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate ("Hold Separate") is by and among Hanson PLC ("Hanson" as defined in Paragraph I. of the proposed Consent Order), a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at 1 Grosvenor Place, London SW1X 7JH, England; Hanson's indirect wholly-owned subsidiary, H B Acquisitions PLC ("HBA"), with its principal office at 1 Grosvenor Place, London SW1X 7JH, England; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "parties").

Premises

Whereas, on October 18, 1991, Hanson and HBA commenced a tender offer to acquire all of the voting securities of Beazer PLC ("Beazer"); and

Whereas, Kaiser Cement ("Kaiser"), an indirect, wholly-owned subsidiary of Hanson, with its principal office located at 1333 N. California Boulevard, Suite 445, Walnut Creek, CA 94596-1309, operates a cement manufacturing facility in Permanente, California; and

Whereas, Ssangyong/Riverside Ltd., a California general partnership d/b/a Cencal Cement Company ("Cencal"), with its principal office located at 2321 W. Washington Street, Suite H, Stockton, California 95203, owns a deep-sea cement import terminal located at the Port of Stockton, California. Cencal is owned equally, as a joint venture, by Beazer PLC and Ssangyong, a Korean Company; and

Whereas, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached agreement containing consent order ("agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached to preserve the *status quo ante* and to hold separate the assets and businesses of Cencal until the divestiture of Cencal contemplated by the Consent Order has been made, divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Cencal interest as described in Paragraph I. of the proposed Consent Order, and the Commission's right to have Cencal continue as a viable competitor of Kaiser; and

Whereas, the purpose of the Hold Separate and the Consent Order is to:

1. Preserve Cencal as a viable independent deep-sea cement import terminal, pending divestiture of the Cencal interest as defined in Paragraph I. of the Consent Order,

2. Remedy any anticompetitive effects of the Acquisition,

3. Preserve the Cencal assets as viable assets engaged in the same business in which they are presently employed pending divestiture; and

Whereas, Hanson's entering into this Hold Separate shall in no way be construed as an admission by Hanson that the acquisition is illegal; and

Whereas, Hanson understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provision of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the agreement, it will not seek further relief from Hanson with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the Order to which the Hold Separate is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of Cencal and all other available relief pursuant to the Order, as follows:

1. Hanson agrees to execute and be bound by the attached agreement.

2. Hanson agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2(a) and 2(b), it will comply with the provisions of this Hold Separate:

(a) Three (3) business days after the Commission withdraws its acceptance of the consent agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

(b) the day after the divestiture obligations required by the consent order have been satisfied.

3. To ensure the complete independence and viability of Cencal and to assure that no competitive

information is exchanged between Cencal and any of the cement related operations of Hanson, Hanson will hold Cencal separate and apart on the following terms and conditions:

(a) Cencal, as it is presently constituted, shall be held separate and apart and shall be operated independently of Hanson (meaning here and hereinafter, Hanson excluding Cencal); provided however that Hanson may exercise only such direction and control over Cencal as is necessary to assure compliance with this Hold Separate, the agreement, and the Order.

(b) Hanson shall not exercise direction or control over, or influence, directly or indirectly, Cencal or any of its operations or businesses; provided, however, that Hanson may exercise only such direction and control over Cencal as is necessary to assure compliance with this Hold Separate, the agreement, and the Order.

(c) Hanson shall maintain the viability and marketability of Cencal and shall not sell, transfer, encumber (other than in the ordinary course of business), or otherwise impair its marketability or viability.

(d) The Cencal Management Committee shall have exclusive authority for managing Cencal.

(e) The individuals on the Cencal Management Committee shall not be involved in any way in the marketing, selling, manufacturing, or management of Kaiser, or any other business of Hanson (other than Beazer's operations as presently constituted) involved in the marketing, selling, production, management, shipment, or distribution of cement in the Northern California market. Each of these individuals, the management of Cencal and Hanson's directors, officers, or employees responsible for the operation or management of Kaiser and any other Hanson cement related assets will receive the notification appended as Attachment A hereto.

(f) If necessary to assure compliance with the terms of this Hold Separate, the agreement, and the Order, Hanson may, but not required to, assign an individual to Cencal for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of Cencal and such records of Cencal as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement with Hanson agreeing to be bound by the terms and conditions of Attachment A, appended hereto.

(g) Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, Hanson shall not receive or have access to, or the use of, any material confidential information about Cencal or the activities of the Cencal Management Committee in managing the business that is not in the public domain. Nor shall the Cencal Management Committee, any individual member of the Cencal Management Committee, nor the on-site person receive or have access to, or the use of, any material confidential information about Hanson's cement related assets or related businesses or activities not in the public domain. Hanson may receive on a regular basis from Cencal aggregate financial information necessary and essential to allow Hanson to prepare United States consolidated financial reports, tax returns, and personnel reports. "Material confidential information," as used herein, means competitively sensitive or proprietary information, not independently known to Hanson from sources other than the Cencal Management Committee and includes, but is not limited to, customer lists, price lists, bidding lists, marketing methods, marketing plans, sales plans, long range planning documents, patents, technologies, processes, or other trade secrets.

(h) Hanson shall not remove or replace any member of the Cencal Management Committee, or the on-site person except as provided below:

(i) Hanson may remove and replace anyone for cause, death, disability, or resignation from service with Hanson;

(ii) Hanson may remove any member of the Cencal Management Committee if a conflict of interest develops in that member's role as a potential purchaser of the Cencal Assets and that role as a manager of Cencal;

(iii) Hanson may replace any member of the Cencal Management Committee or officer of Cencal after providing the Commission with sixty (60) days advance written notice; and

(iv) Hanson may replace any individual who interferes in any way with Hanson's ability to comply with the terms of this Hold Separate, the agreement, or the Order.

Provided, however, that each individual newly appointed to the Cencal Management Committee, pursuant to this subparagraph, must conform to all terms and condition of this Hold Separate.

(i) Hanson shall provide Cencal with its share of working capital as Cencal requests from its partners from time to time.

(j) In the event aggregate losses in Cencal exceed $3,000,000, Hanson shall not exercise its right to dissolve the joint venture. In the event aggregate losses in Cencal exceed $3,000,000, and Ssangyong elects to dissolve the joint venture, Hanson shall take any and all reasonable measures necessary to ensure the continued viability of Cencal as an independent deepsea cement import terminal as defined in Paragraph I of the Consent Order, including, but not limited to, the contribution of working capital.

(k) Should the Commission seek in any proceeding to compel Hanson to divest itself of the Cencal interest as defined in the proposed order, Hanson shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition. Hanson also waives all rights to contest the validity of this Hold Separate.

4. To the extent that this Hold Separate or Consent Order requires Hanson to take, or prohibits Hanson from taking, certain actions which otherwise may be required or prohibited by contract, Hanson shall abide by the terms of the Hold Separate or Consent Order and shall not assert as a defense such contract requirements in a civil penalty action or any other action brought by the Commission to enforce the terms of this Hold Separate or Consent Order.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Hanson Industries, 99 Wood Avenue South, Iselin, New Jersey 08830, Hanson's United States affiliate, Hanson shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Hanson and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Hanson relating to compliance with this Hold Separate;

(b) Upon five (5) days notice to Hanson, and without restraint or interference from Hanson, to interview officers or employees of Hanson, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

Attachment A—Notice of Divestiture and Requirement for Confidentiality

Hanson PLC ("Hanson") has entered into a Consent Agreement and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of the to be acquired interest in Cencal Cement Company ("Cencal"). Until after the Commission's Order becomes final and the interests in Cencal divested, Cencal must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Hanson. All competitive information relating to Cencal must be retained and maintained by the persons responsible for the management of Cencal (including each of Cencal's Board of Directors who are employees of Beazer) on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any competing Hanson business, including the operations of Kaiser Cement Corporation ("Kaiser"). Similarly, all such persons responsible for the management of Hanson's competing businesses shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such businesses to or with any person responsible for Cencal.

Any violation of the Consent Agreement or the Hold Separate Agreement, incorporated by reference as part of the Consent Order, may subject Hanson to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted an agreement to a proposed Consent Order and Agreement to Hold Separate from Hanson PLC and H B Acquisitions PLC ("HBA"), an indirect, wholly-owned subsidiary of Hanson PLC ("hereinafter collectively referred to as "Hanson").

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested people. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On October 18, 1991, Hanson and HBA commenced a tender offer to acquire all of the voting securities of Beazer. The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and section 5 of the FTC Act, as amended, 15 U.S.C. 45 in the market for the manufacture and sale of cement in Northern California.

The proposed Consent Order provides that within 180 days of the Order becoming final, Hanson shall either acquire the remaining 50% of Cencal (a deep-sea import terminal located at the Port of Stockton, California), or sell its 50% interest in Cencal to Ssangyong (Pacific), Inc. In the event Hanson acquires a 100% interest in Cencal, the proposed Consent Order provides that Hanson shall divest all of its interest in Cencal within twelve (12) months after the Order becomes final. If the divestiture is not completed within twelve (12) months, the Commission will appoint a trustee to complete the divestiture.

The Hold Separate provides that during any period in which Hanson possesses an ownership interest in Cencal, Cencal will be operated independently of Hanson. Under the provisions of the Order, Hanson is also required to provide to the Commission a report of its compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until Hanson has completely divested its interest in Cencal. The proposed Order will also require Hanson to cease and desist for ten (10) years from acquiring, without Federal Trade Commission approval, any interest in assets suitable for the manufacture, sale, shipment or distribution of cement in the Northern California market. One year from the date the Order becomes final and annually thereafter for nine (9) years, Hanson will be required to provide to the Commission a report of their compliance with the cease and desist provision of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-29830 Filed 12-13-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is given that chapter 3, the Office of the Deputy Commissioner for Programs, is being amended to reflect the establishment of the Division of employment and Rehabilitation Programs (DERP) (S3CC); the transfer of vocational rehabilitation responsibilities from the Division of Field Disability Operations (S3CB) to the Division of Disability Process Policy (DDPP) (S3C9) to DERP; the transfer of responsibility for statistical and program data from the Division of Field Disability Operations (S3CB) to the Division of Disability Program Information and Studies (S3C7); and, the transfer of responsibility for liaison to the regions, advocacy groups and the public from the office of Medical Evaluation (S3C2) to DDPP.

The new material and changes are as follows:

Section S3C.10 *The Office of Disability*—(Organization):

Add:

J. The Division of Employment and Rehabilitation Programs (S3CC).

Section S3C.20 *The Office of Disability*—(Functions):

D. The Office of Medical Evaluation (S3C2).

Delete:

5. In its entirety.

Add:

5. Carries out professional relations efforts in support of SSA's efforts to gain support from professional medical associations.

G. The Division of Field Disability Operations (S3CB).

Delete:

4. In its entirety.

Renumber 5. as 4.

H. The Division of Disability Process Policy (S3C9).

Delete:

4. In its entirety.

Add:

4. Maintains liaison and assists professional relations efforts to gain the support of private advocacy groups, Federal, State and local agencies and the public; provides guidance and assistance on disability professional relations issues to the SSA regional and Disability Determination Services' field networks.

I. The Division of Disability Program Information and Studies (S3C7).

Add:

3. Develops and maintains data bases for research, statistical activities and program information. Provides recurring and specialized reports and coordinates information requirements.

Add:

J. The Division of Employment and Rehabilitation Programs (S3CC).

1. Implements the provisions of the Social Security Act which call for the referral of beneficiaries and recipients to the State or alternate vocational rehabilitation (VR) providers, evaluates VR provider services, reimburses VR providers for successful rehabilitations, ensures that client participation in a program is appropriate and meets the requirements of the Act and develops proposals and plans for new VR initiatives.

2. Implements and evaluates models for delivering rehabilitation, job placement and post-employment services and for making appropriate referrals to public and private agencies. Administers contracts to support projects.

3. Develops initiatives to promote public understanding and use of work incentives through enhanced outreach activities and by building networks with community-based agencies and service providers.

4. Prepares and revises regulations, operating policies and training materials. Develops proposals for new work incentives.

Dated: November 22, 1991.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 91-29870 Filed 12-13-1991; 8:45 am]

BILLING CODE 4190-29-M

Agency for Health Care Policy and Research

Assessment of Medical Technology

The Public Health Service's (PHS) Agency for Health Care Policy and Research, through the Office of Health Technology Assessment (OHTA), announces that it is initiating an assessment of the need for certain tests in patients with end-stage renal disease (ESRD) undergoing dialysis.

Current Medicare coverage instructions allow for several tests to be performed on a regular basis in dialysis patients; these include tests of nerve conduction velocity and electrocardiograms every three months, chest X-rays every six months, and hepatitis-associated antigen testing every month. The question to be addressed in this assessment include: Whether nerve conduction testing (NCT) is required on a regular basis for assessment of peripheral nerve function in dialysis patients, and whether other tests of peripheral nerve function are more appropriate; if such testing is needed on a regular basis, what is the most appropriate frequency of assessments of peripheral nerve function in dialysis patients; is evaluation of dialysis patients by electrocardiogram and chest X-ray necessary on a regular basis in the absence of usually accepted clinical indications for such testing; whether hepatitis-associated antigen testing is necessary on a monthly basis; do the results of any of the above tests alter the dialysis prescription? In addition, we are interested in determining whether the necessity for, and frequency of, such tests differ depending upon whether the patient is treated by hemodialysis, intermittent peritoneal dialysis, continuous ambulatory peritoneal dialysis or hemoperfusion.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations and individuals in the private sector, from PHS agencies and others in the Federal Government, and from objective published medical and scientific reports. Based on this assessment a PHS recommendation will be formulated to assist the Health Care Financing Administration in establishing coverage policy.

Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than February 1, 1992 or within 90 days from the date of publication of this notice.

To enable the interested scientific community to evaluate the information included in the assessment, AHCPR will discuss in the assessment only those data and analyses for which a source(s) can be cited. Respondents therefore are encouraged to include with their submission a written consent permitting AHCPR to cite the source of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-1(c), no information received will be published or disclosed which could identify an individual described in the information or an entity supplying the information.

Written material should be submitted to: Director, Office of Health Technology Assessment, AHCPR, 2101 Executive Boulevard, suite 400, Rockville, MD 20852, (301) 227-8337.

Dated: December 9, 1991.

J. Jarrett Clinton,

Administration.

[FR Doc. 91-29987 Filed 12-13-91; 8:45 am]

BILLING CODE 4160-90-M

Alcohol, Drug Abuse, and Mental Health Administration

Voluntary Withdrawal of Laboratory From Engaging in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. Effective December 6, 1991, the following laboratory voluntarily discontinued its laboratory operations as a NIDA certified laboratory: Roche Biomedical Laboratories, Inc., 6370 Wilcox Road, Dublin, OH 43107, 614-889-1061.

All forensic urine drug testing operations were transferred to the following facility at: Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, Research Triangle Park, NC 27709, 919-361-7770.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301-443-6014.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-30062 Filed 12-12-91; 11:47 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[OCC-28-CN]

Medicare Program; Conditional Designation of States in Which Medicare Select Insurance Policies May Be Issued; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: In the September 20, 1991 issue of the **Federal Register** (56 FR 47763), we announced the Secretary's conditional determination of the 15 States in which Medicare supplemental insurance policies (commonly referred to as "Medigap" policies) may be issued

as Medicare SELECT policies. In that notice, we inadvertently omitted a deadline date for receipt of public comments. In addition, we inadvertently omitted one State from the list of alternate States to issue these policies.

This correction notice specifies the public comment deadline date and adds Louisiana to the designated list of alternate States as follows:

1. On page 47764, first column, at the end of the "**DATES**" section, the sentence "Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 20, 1991." is added.

2. On page 47765, third column, under section "A. Solicitation of States as Candidates," second paragraph, first sentence, the number "28" is changed to "29".

3. On page 47766—

a. In the first column, in the sixth paragraph, third line, the number "28" is changed to "29".

b. In the second column, under section "D. Alternative States," in the second paragraph, "Louisiana" in added alphabetically to the list of alternative States.

FOR FURTHER INFORMATION CONTACT: Jean LeMasurier, (202) 401–2323.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplemental Medical Insurance)

Fred Wirth,

Acting Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 91–29875 Filed 12–13–91; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of 9-Amino-Camptothecin as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of 9-amino-camptothecin for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers. The selected sponsor will be awarded a CRADA for the development of this agent.

ADDRESSES: Questions about this opportunity may be addressed to Dale Shoemaker, Ph.D., Executive Secretary, CRADA Selection Committee, Division of Cancer Treatment, NCI, EPN, room 718, Bethesda, Maryland 20892 (301) 496–7912, from whom further information including a summary copy of the preclinical data may be obtained.

DATES: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until January 30, 1992.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop 9-amino-camptothecin to a marketable status to meet the needs of the public and with the best terms for the Government. 9-Amino-camptothecin is a derivative of a natural product and has demonstrated good *in vivo* antitumor activity against both murine tumors and human tumor xenografts. The mechanism of action of this agent appears to be the inhibition of the enzyme topoisomerase I. Preclinical toxicology studies for 9-amino-camptothecin are underway with an anticipated date of mid-1992 for the initial Phase I trials in humans. 9-Amino-camptothecin is not covered by a U.S. composition of matter patent and may classify as an orphan agent.

The Division of Cancer Treatment, NCI, is interested in establishing a CRADA for this agent with a pharmaceutical company to assist in the continuing development of the agent. The Government will provide all available expertise and information to date and will jointly pursue new clinical studies as required giving the pharmaceutical company exclusive rights to the New Drug Application-directed clinical data from Phase II/III trials. The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of this agent to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The Government will provide information concerning pharmaceutical manufacturing and controls including dosage form development data.

2. The Government will allow the pharmaceutical company to review and cross-file the Division's IND for the agent; it is likely that the pharmaceutical company would wish to undertake clinical studies independently.

3. The Government will make the Division's IND for the agent proprietary under such circumstances and the IND data will be offered exclusively to the selected pharmaceutical company.

4. The Government will continue the preclinical and clinical development of this agent under its extramural clinical trials network.

The role of the successful pharmaceutical company for the agent under a CRADA will include the following:

1. Provide and implement plans to independently secure future continuing supplies of the agent to assure continued preclinical and clinical development.

2. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the preclinical and clinical development of anticancer agents.

2. Experience and ability to produce, package, market and distribute pharmaceutical agents in the United States and to provide the agent at a reasonable price.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials of investigational agents.

5. A willingness to cost share in the development of the agent. This includes the acquisition of bulk material and formulation of clinical products in adequate amounts as needed for future clinical trials and marketing.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines and clincial development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: December 6, 1991.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91-29929 Filed 12-13-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Centers for Disease Control Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 56 FR 58251, dated November 18, 1991) is amended to reflect the abolishment of the Dental Disease Prevention Activity, Office of the Director, National Center for Prevention Services, and the establishment of the Division of Oral Health and an Office of the Director.

Section HC-M, Organization and Functions, is hereby amended as follows:

1. After the functional statement for the National Center for Prevention Services (HCM), Office of the Director (HCM1), delete in their entirety the title and functional statement for the Dental Disease Prevention Activity (HCM11).

2. After the functional statement for the Division of Immunization (HCM2), insert the following:

Division of Oral Health (HCM6). (1) Provides a national and international focus for the prevention and control of dental diseases and oral conditions, and for the prevention and control of infectious diseases in dentistry; (2) provides assistance to State and local governments, professional, educational, voluntary, and community-based and citizens organizations through consultation, training, promotion, education, and surveillance, and other technical services; (3) assists State and local governments and other organizations in evaluating dental, oral, and infectious disease prevention activities; (4) develops and implements oral health activities for underserved racial and ethnic minority populations; (5) collects, analyzes, summarizes, and distributes information on the status of dental public health programs; (6) conducts and evaluates operational research to develop improved methodology for oral disease prevention; (7) develops and conducts surveillance of dental and oral disease problems; (8) maintains liaison with other Federal agencies, State and local health agencies, and national organizations and groups on oral health activities; (9) collaborates with other components of CDC, PHS, and DDHS in carrying out programs.

Office of the Director (HCM61). (1) Manages, directs, and coordinates the activities of the Division of Oral Health (DOH); (2) provides leadership and guidance in policy formulation, program planning and development, program management and operations; (3) provides administrative, fiscal, procurement, and technical support for the Division; (4) coordinates responses to all congressional, public, and Freedom of Information inquiries; (5) coordinates all clearance functions; (6) manages all personnel activities, including staff recruitment, assignment, and career development; (7) coordinates activities of the Division with other components of PHS and CDC.

Effective Date: December 4, 1991.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 91-29907 Filed 12-3-91; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3363; FR-2932-N-05]

RIN 2501-AB13

Instructions for Preparing an Abbreviated Comprehensive Housing Affordability Strategy

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice concerning the preparation of an Abbreviated comprehensive housing affordability strategy.

SUMMARY: On February 4, 1991 (56 FR 4480) the Department published an interim rule in the **Federal Register** on Comprehensive Housing Affordability Strategies (CHAS). That rule provided for both a full-length CHAS and an abbreviated CHAS. Forms and instructions were developed and publicized for the full-length CHAS. This notice provides instructions to jurisdictions needing to prepare an abbreviated CHAS (hereafter referred to as an abbreviated strategy). The abbreviated strategy is necessary to provide the certification of consistency with a CHAS required by a number of HUD-funded programs for proposed housing activities.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-7000; telephone (202) 708-2470. Hearing or speech-impaired individuals may call HUD's TDD number (202) 755-2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements referenced in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)) and assigned OMB approval number 2506-0117, expiring January 31, 1992. HUD will not issue a specific form for the abbreviated strategy; jurisdictions may develop their own format, subject to the information requirements below.

I. Background and Authority

The Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) made several significant changes in the way in which jurisdictions may apply for and receive HUD housing funds. One major change required that jurisdictions wishing to receive HUD housing funds prepare and submit to HUD for approval a Comprehensive Housing Affordability Strategy (CHAS) detailing housing needs and market conditions within their community, together with strategies and plans for meeting those needs using available or anticipated resources. Under the interim CHAS rule (24 CFR part 91), all "jurisdictions" (States and units of general local government) designated as "participating jurisdictions" under the HOME program, as well as States and CDBG entitlement grantees not so designated, are required to submit a full CHAS containing all of the fourteen statutory elements described in 24 CFR 91.15 and 91.20.

The CHAS regulations at 24 CFR 91.25 permit jurisdictions that are not required to have a complete CHAS to submit an abbreviated housing strategy appropriate to the types and amounts of assistance sought from HUD. The regulations state that an abbreviated strategy must include the elements of strategies required for a complete CHAS except to the extent that they are clearly unnecessary or inapplicable, as determined by HUD.

II. Applicability

Where a jurisdiction that is permitted to use an abbreviated strategy wishes to apply directly to HUD for funds under the programs listed below, the required certification of consistency with a comprehensive housing affordability strategy will be satisfied by submission of a certification of consistency with an abbreviated strategy. (Indian tribes are not required to have any form of CHAS, nor are they required to submit a certification of consistency with a CHAS in connection with these programs.)

The following programs require submission of a strategy:

- HOME program reallocations (title II of NAHA)
- HOPE I Public Housing Homeownership program (title IV of NAHA)
- HOPE II Homeownership of Multifamily Units program (title IV of NAHA)
- HOPE III Homeownership of Single Family Homes program (title IV of NAHA)
- Community Development Block Grant (CDBG) program for HUD-Administered Small Cities (in Hawaii and New York State) and Insular Areas grants where the application includes a housing activity (sections 106(d) and 107 of the Housing and Community Development Act of 1974, as amended)
- Supportive Housing Demonstration program (title IV, subtitle C, of the Stewart B. McKinney Homeless Assistance Act)
- Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program (title IV, subtitle D of the Stewart B. McKinney Homeless Assistance Act)
- Emergency Shelter Grants (ESG) program reallocations (title IV, subtitle B of the Stewart B. McKinney Homeless Assistance Act)
- Shelter Plus Care program (title IV, subtitle F of the Stewart B. McKinney Homeless Assistance Act)
- Housing Opportunities for Persons with AIDS program (sections 851–863 of NAHA)

An abbreviated strategy (or complete CHAS) is not required to apply for funds for Public Housing, Section 8 vouchers and certificates, nor is it required for participation by Indian tribes in any of these programs.

An eligible nonprofit organization applying for funding under one of the programs listed above or under the Supportive Housing for the Elderly program or the Supportive Housing for Persons with Disabilities program, must obtain a certification of consistency with an approved housing strategy from the lowest level of government having a CHAS covering the jurisdiction in which the proposed project is to be located. Should that CHAS fail to provide a basis for consistency, either a suitable amendment can be prepared or, in the case of a proposed project in a local jurisdiction not having an existing CHAS, that local jurisdiction may prepare an abbreviated strategy appropriate to the project.

III. Abbreviated Strategy Contents

A jurisdiction wishing to submit an abbreviated strategy to apply for or cover specific program funds (e.g., McKinney Act or HOPE funds), need only address the specific needs of the segment of the population/market which is eligible to be served by those program funds. For example, if McKinney Act funds are being applied for, the jurisdiction would only need to provide information relative to its homeless population in its abbreviated strategy for this program.

In its abbreviated strategy, a jurisdiction must address only the elements briefly summarized below. For purposes of reference to the full, regulatory description of each element, designating letters are those appearing in 24 CFR 91.15:

(a) Needs Data

A jurisdiction must address its needs for the current fiscal year for the population which is eligible to be served by the program for which funds are requested (e.g., low income and very low income persons for the CDBG and HOME programs; homeless persons for the McKinney Act programs). The time period and the geographic area (if other than the entire jurisdiction) that the strategy intends to serve for the target population(s) specified should also be identified.

(b) Homeless Assistance Needs and Strategy

If McKinney Act funds are being applied for, the jurisdiction must address the information required in this subsection.

(c) Market Characteristics

A jurisdiction must provide information on market characteristics pertaining to the eligible population group(s) to be served by the program for which funds are requested, or in the case of a request for HOPE funding, information pertaining to the homeownership market for the target population.

(f) Resources

A jurisdiction must indicate whether any additional private or public resources will be used to address the identified needs. The strategy must clearly identify any other Federal agencies that are providing or being requested to provide funds for the program(s) applied for, and must identify any private or local resources drawn wholly or partially from other Federal funding sources.

(l) Fair Housing

A jurisdiction must provide a certification that it will affirmatively further fair housing, and will maintain records pertaining to any steps taken to carry out the certification.

(m) Replacement of Low-Income Housing and Relocation Assistance

A jurisdiction applying for assistance under any of the above listed programs must provide a certification that it is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)) to the extent the plan requirements under that section apply to it as a recipient of CDBG funds.

(n) Goals

A jurisdiction must include a statement indicating the number of families that will be assisted with the funds being requested under each program for which it is applying, as well as the number of families to be assisted with identified resources.

Jurisdictions developing an abbreviated strategy do not have to provide information on the remaining elements of a complete CHAS, and are not required to fill out any of the forms required in the instructions for developing a complete local CHAS. Rather, they should include in their narrative of the elements listed above information concerning population which is eligible to be served under the program(s) for which funds are requested.

The following items, in addition to the information required above, should be included in the abbreviated strategy package:

- A *cover sheet* identifying the jurisdiction, the lead agency, a contact person and the time period covered by the submission.
- A *transmittal letter* signed by the jurisdiction's Chief Executive Officer or his/her designee.
- A *Table of Contents*.

• A *summary* which describes the process used to develop the abbreviated strategy including the governmental cooperation which took place, the involvement of public agencies, concerned community groups and non-profit organizations and any other information the jurisdiction considers relevant.

• *Public Response.* A jurisdiction must include in its abbreviated strategy a summary indicating how it met HUD's citizen participation requirements outlined in section IV below, and summarizing public comments. The summary shall also note the jurisdiction's response to public comments reflected in its abbreviated strategy.

IV. Citizen Participation Requirements

Before submitting an abbreviated strategy to HUD for review, a jurisdiction must comply with the following citizen participation requirements:

(a) Make available to its citizens, public agencies, and other interested parties information concerning the amount of assistance the jurisdiction expects to receive and the range of investment or other uses of the assistance that the jurisdiction may undertake.

(b) Make the proposed abbreviated strategy available to the public by publishing a summary of the strategy in a newspaper of general circulation, and by offering copies of the entire abbreviated strategy at local libraries, government offices and other public places. The length of time provided for affected citizens, public agencies and other interested parties to examine its content must be reasonable and at least thirty days.

(c) If the abbreviated strategy includes application for homeless assistance funds and/or other programs providing supportive housing, the jurisdiction must make reasonable efforts to confer with appropriate social service agencies regarding the needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by the agencies. Agencies contacted and the results of such contacts must be briefly summarized in the strategy.

(d) Hold a public hearing to obtain the views of citizens, public agencies, and other interested parties on the needs of the jurisdiction for each program to be applied for. Where a hearing is held in connection with the CDBG HUD-administered Small Cities program or the CDBG Insular Areas program, the hearing on the abbreviated strategy may be combined with that hearing.

(e) Provide citizens, public agencies and other interested parties with reasonable access to records regarding use of any assistance the jurisdiction may have received during the preceding five years.

(f) Consider any comments or views of citizens. A summary of these comments or views together with the jurisdiction's response must be included in the abbreviated strategy. The final strategy as submitted to HUD and any amendments later made pursuant to HUD request must be made available to the public.

V. Time Frames for Submission and Review

An abbreviated strategy must be submitted for HUD approval before or at the time of submission of the application for funding. A jurisdiction that expects to apply for more than one of the listed programs may (but need not) submit a single abbreviated strategy covering all programs for which it intends to apply.

A jurisdiction having an approved abbreviated strategy that decides at a later date to submit an application for assistance under one or more programs not consistent with the approved strategy, must submit an amended abbreviated strategy covering the new program(s) to HUD before or with the new application(s). Citizen participation requirements must be complied with for any portion(s) of the submission covering the new program(s).

HUD must review and approve an abbreviated strategy or amended abbreviated strategy, or notify the jurisdiction of the reasons for disapproval, within sixty days of receipt. An abbreviated strategy or amended abbreviated strategy that has not been acted upon by HUD within sixty days of receipt is deemed to be approved without further formal action. If HUD disapproves, it must provide written reasons within fifteen days of disapproval. A jurisdiction must submit its revised abbreviated strategy or amended abbreviated strategy within 45 days of the date of HUD's notification of disapproval. HUD will have an additional 30 days following resubmission to approve or disapprove the revision, and must provide written reasons within fifteen days following any subsequent disapproval.

An application for funds with respect to which HUD approval of a submitted strategy is pending will either be put on hold until the strategy is approved or will be disapproved, dependent on the rules or time frames involved in the particular program(s) for which funds are being requested.

VI. Certifications

Certifications of consistency with the CHAS are required to be submitted with the applications for funding under the listed programs (except the Housing Opportunities for Persons with AIDS programs). The HOPE and Shelter Plus Care programs require applications with certifications of consistency with the approved CHAS. Jurisdictions that do not already have an approved CHAS applicable to those programs when a NOFA is published will not have sufficient lead time to obtain an approved abbreviated strategy before the application submission deadline and would be precluded from applying for assistance. Therefore, HUD will accept applications for the HOPE and Shelter Plus Care programs with certifications that the proposed activities are consistent with the CHAS being submitted for approval. The abbreviated strategy must be submitted before or with the application. (The same type of certification will be accepted from eligible nonprofit organizations applying for funding under the Supportive Housing for the Elderly program and the Supportive Housing for Persons with Disabilities program.)

The programs listed that are authorized by the Stewart B. McKinney Act also prohibit the availability of funds unless the jurisdiction certifies that it is following an approved CHAS. Since this certification is not required as part of the application, it will be included in the grant agreement.

VII. Strategy Updates and Performance Reports

No annual update of an abbreviated strategy is required. However, 24 CFR 91.75 requires that each jurisdiction that receives HUD funds in connection with an approved CHAS (complete or abbreviated) must submit to HUD an annual performance report. These annual reports must continue to be submitted in connection with an abbreviated strategy until completion of the project.

Dated: December 6, 1991.

S. Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-29933 Filed 12-13-91; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No's. N-91-1913; FR-2597-N-02; N-91-1898; FR-2529-N-02]

Policy on Establishment of Ceiling Rents for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of change in policy.

SUMMARY: This Notice announces a change in HUD policy for the establishment of ceiling rents for public housing to extend the length of time that a ceiling rent may be available for any one family to five years, in accordance with section 302 of the HUD Reform Act of 1989. The Notice also announces that the authority to waive 24 CFR 905.325 and 24 CFR 913.107 to permit the establishment of ceiling rents in public or Indian housing, may be granted only by the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Public Housing: Edward C. Whipple, room 4206, telephone (202) 708-0744; Indian Housing: Dom Nessi, room 4140, telephone (202) 708-1015; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410; (TDD: (202) 708-0850). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On March 15, 1989, the Department published a Notice in the **Federal Register** announcing the public housing agencies (PHAs) could apply to HUD for waivers of 24 CFR 913.107 to establish ceiling rents for public housing projects owned and operated by the PHA (54 FR 10733). Ceiling rents for public and Indian housing were authorized by section 102(a) of the Housing and Urban Development Act of 1987 (1987 Act), which amended section 3(a) of the U.S. Housing Act of 1937 to allow an alternative method of calculating a tenant family's rent other than one based on the family's income.

The March 15, 1989 Notice announced that ceiling rents, if established by the PHA and approved by HUD, would be available for any one family residing in public housing for a period of up to 36 months, in accordance with section 102(a). Section 302 of the HUD Reform Act amended this provision, and extended the time to 60 months. The 60-month period applies to both previously approved ceiling rents and to new authorizations. Therefore, this Notice announces the availability of ceiling rents for any one family for a period of 60 months. Families that are currently paying a ceiling rent amount as their total tenant payment, under a previously approved waiver, may continue on ceiling rent for an additional 24 months.

A similar Notice announcing the availability of waivers to establish ceiling rents in Indian housing was also published on March 15, 1989 (54 FR 10730). However, under section 102(a), there is no limitation on the length of time a family residing in Indian housing may pay a ceiling rent. When the March 15, 1989 Notices were published, the applicable regulation for Indian housing was also 24 CFR 913.107. Since that time, the Department has published an interim rule consolidating regulations for Indian housing into 24 CFR part 905 (55 FR 24721, June 18, 1990). The applicable regulation, therefore, for Indian housing is now 24 CFR 905.325.

Both March 15, 1989 Notices (*i.e.*, for public housing and for Indian housing) announced that waivers would be available from HUD field offices. This authority was withdrawn on April 22, 1991 (56 FR 16337), and now resides with the Assistant Secretary for Public and Indian Housing. Local HUD field offices will continue to review PHA and IHA requests for waivers to ensure that all necessary requirements have been met. However, a field office must then send the request, along with its recommendation (through the Regional office, where applicable) to HUD Headquarters for approval by the Assistant Secretary.

Other Matters

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980, information collection requirements for the establishment of ceiling rents have been approved by the Office of Management and Budget under OMB control number 2577-0126.

A Finding of No Significant Impact with respect to the environment was made when the original Notices with regard to ceiling rents were published, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding, which is not affected by today's Notice, is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Previous determinations by the General Counsel that the establishment of ceiling rents is not subject to review under Executive Order 12606, The Family, and Executive Order 12612, Federalism, are unchanged by the publication of this Notice.

Dated: December 9, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-29934 Filed 12-13-91; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-4320-14-241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0068), Washington, DC 20503, telephone (202) 395-7340.

Title: Cooperative Agreement for Range Improvement.

OMB Approval Number: 1004-0068.

Abstract: This form is used for applicants to obtain authority to construct and maintain range improvements on the public lands and to document standards, design, costs, and labor relative to each improvement.

Bureau Form Number: 4120-6.

Frequency: On occasion.

Description of Respondents: Individuals requesting permission to construct range improvements on public lands.

Estimated completion time: 10 minutes.

Annual Responses: 600.

Annual Burden Hours: 102.

BLM Clearance Officer (Alternate): Gerri Jenkins (202) 653-8853.

Dated: July 26, 1991.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 91-29923 Filed 12-13-91; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Milltown Hill Project, Douglas County, OR

AGENCY: Bureau of Reclamation (Interior) in cooperation with Bureau of Land Management (Interior).

ACTION: Notice of availability and notice of public hearings on the draft environmental impact statement (DEIS); INT-DES 91-__

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation), in cooperation with the Bureau of Land Management, has prepared the DEIS for the Milltown Hill Project, Douglas County, Oregon.

Under provisions of the Small Reclamation Projects Act (Pub. L. 84-984), as amended, Douglas County has applied for a Federal loan and grants to develop a dam and reservoir at the Milltown Hill site on Elk Creek, which would provide for irrigation, municipal and industrial water supply, improved anadromous fish habitat, flood control, and outdoor recreation opportunities.

DATES: A 60-day review period begins with the publication of this notice. Written comments on the DEIS may be submitted to the Regional Director, Reclamation, Pacific Northwest Region, at the address provided below, on or before February 14, 1992.

Public hearings on the DEIS will be held on the following dates at the locations indicated.

Session 1: Monday, January 20, 1992, 7 p.m., Drain Civic Center, 129 West C Avenue, Drain, Oregon

Session 2: Tuesday, January 21, 1992, 7 p.m., Douglas County Courthouse, Commissioners Auditorium, room 216, 1036 SE Douglas, Roseburg, Oregon.

ADDRESSES: Copies of the DEIS may be obtained on request to the following:

- Regional Director, Bureau of Reclamation, Attention: PN-150, Box 043-550 West Fort Street, Boise ID 83734; Telephone: (208) 334-1207.

Copies of the DEIS are available for inspection at the following locations:

- Douglas County, Department of Water Resources Survey, Justice Building, room 103, Roseburg OR 97470.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, room 167, Denver CO 80225.
- National Agricultural Library Building, Beltsville MD
- Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., room 7456, Washington DC 20240; Telephone: (202) 208)-4662.

Libraries:

Yoncalla Public Library, 281 Front, Yoncalla OR

Umpqua Community College Library, 1140 Umpqua College Road, Roseburg, Oregon

Oakland Public Library, 637 Locust, Oakland, Oregon

Multnomah County Library, 801 SW 10th, Portland, Oregon

Drain Public Library, 205 West A Avenue, Drain, Oregon

Douglas County Library, Douglas County Courthouse, 1036 SE Douglas, Roseburg, Orgon

Sutherlin Public Library, 210 East Central, Sutherlin, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas James (Regional Environmental Officer, Pacific Northwest Region, Boise, Idaho); Telephone: (208) 334-1207.

SUPPLEMENTARY INFORMATION: The project consists of a 186-foot-high dam and 24,143-acre-foot reservoir on Elk Creek which would provide storage and distribution of water to the communities of Rice Hill, Yoncalla, and Drain, allowing for municipal expansion and industrial diversification; increased water to provide a supplemental or full irrigation supply for up to 4,661 acres of arable lands; provide regulated flows of water for improved anadromous fish habitat; improved water quality in Elk Creek and Yoncalla Creek; and new water-related recreational facilities at the proposed reservoir. The project would also provide limited flood control in and near the city of Drain and would provide drainage facilities on agricultural lands as needed.

Environmental effects due to implementation of the preferred plan would include a loss of wetland and riparian habitats, which would be fully mitigated. The project would provide an opportunity to secure 767 additional acres of habitat for the Colombian white-tailed deer, an endangered species, as a project mitigation measure. Construction of the proposed dam and reservoir would require relocation of local residences, roadways, and utility lines.

HEARING PROCESS INFORMATION: Organizations and individuals wishing to present statements at the hearings should contact Bureau of Reclamation, Pacific Northwest Regional Office, Attention: PN-150, Box 043-550 West Fort Street, Boise ID 83724, telephone: (208) 334-1207, to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on January 17, 1992. Also, requests should indicate the session at which the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which their requests were received by Reclamation. Requests to speak may also be made at each session and will be called after the advance requests have been accommodated. Oral comments will be limited to 10 minutes per individual.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Pacific Northwest Regional Office at the above address by the end of the 60-day comment period for inclusion in the hearing record.

Dated: November 26, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-29985 Filed 12-13-91; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Urban Park and Recreation Recovery Program

AGENCY: National Park Service, Dept. of the Interior.

ACTION: Notice of FY-1992 grant round—UPARR innovation grants.

SUMMARY: This notice announces the availability of grant funds under the Innovation phase of the Urban Park and Recreation Recovery (UPARR) Program and provides information on the application process including eligible recipients and deadlines for submission of proposals.

FOR FURTHER INFORMATION CONTACT: Mr. Sam L. Hall, Chief, Recreation Grants Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127; (202) 343-3700.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1992, Congress has appropriated $4.9 million for the funding of Innovation projects under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95-625). Grants will be limited to a maximum of $100,000 per recipient. Preapplications must be submitted to the appropriate NPS Regional Offices by March 16, 1992.

Innovation grants may cover the costs of personnel, training, facilities, recreation equipment, supplies or services associated with the development of cost-effective ideas, concepts, and approaches towards

improving facility design, operations, or programming for the delivery of recreation services. Innovation projects should contribute to a systems approach to recreation by linking recreation services with other critical community programs such as housing, transportation, health and public safety, water quality, energy conservation, crime prevention, etc. The project should demonstrate a concept that is untried, unique, and/or advances the state of the art for recreation. Interested jurisdictions are directed to 36 CFR 72.45 for more detailed discussion of fundable elements under the Innovation phase of the UPARR program.

Recognizing current concerns about drug abuse and crime, priority will be given to proposals addressing "Youth at Risk" but those involving other concepts will be considered as well. A number of previously funded projects have had a youth focus. Examples include projects establishing new facilities and programs at youth clubs, recreation activities for young people with disabilities and "Junior" ranger programs. These programs successfully supplied new recreation opportunities, educated young people about outdoor activities and the environmental ethic, and supported anti-crime, anti-vandalism efforts in parks.

Eligible Jurisdictions: Eligible urban jurisdictions (see 36 CFR part 72, appendix B) which have an approved and updated Recovery Action Program (RAP) on file with NPS will be eligible to compete for Innovation grant funds. Additional urban jurisdictions having an approved and updated RAP and meeting the criteria for eligibility described in CFR part 72, appendix A may compete as discretionary applicants. All projects must be in accord with the priorities outlined in the approved and updated RAPs.

Grant Implementation and Timing: Grantees must comply with all applicable Federal laws and regulations for the UPARR program, which includes submission of a final grant application within 120 days of a grant offer.

Preapplication Requirements: Local Chief Executives applying for UPARR grants will be required to certify, in the preapplication, that the grantee has matching funds available and that it will comply with all requirements of the UPARR program. Applicants must certify that they have adequate control and tenure over properties to be assisted through UPARR and must identify in their applications the type of control they have over those properties. Additional requirements are outlined in the UPARR Preapplication Handbook available from the Regional Offices of NPS.

Matching Requirements: UPARR Innovation grants are awarded on a 70/30 (Federal/local) matching basis. As an incentive for State involvement in the program, the Federal government will match, dollar for dollar, State contributions to the local share of the total project cost, up to 15 percent of the approved grant. The Federal share is limited to 85 percent of the approved grant cost.

Pass-Through Funding: At the discretion of the applicant jurisdiction, Innovation grants may be transferred, in whole or in part, to independent general or special purpose local governments, private nonprofit agencies or community groups, and county or regional park authorities that provide recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction. In such situations, the applicant jurisdiction will bear full legal responsibility and liability for passed-through funds.

Post-Completion Requirements: In accordance with section 1010 of the UPARR Act of 1978, assisted properties may not be converted to other than public recreation use without the approval of NPS and the replacement of the converted site or facility with one of reasonably equivalent usefulness and location. This provision may not be applicable to the Innovation project proposed for funding depending upon the nature of the assistance provided (for example, programming at a site owned and operated by a private pass-through entity as opposed to a project that involves facility design and renovation at a city/county recreation facility). Application of the provisions of section 1010 will be determined by NPS based upon the nature of the proposal.

FOR FURTHER INFORMATION: Interested jurisdictions should consult their NPS Regional Office for further information including grant round schedule dates and for technical assistance in applying for funding. The NPS Regional Offices are listed below:

Mid-Atlantic

Regional Director, NPS, 143 S. 3rd Street, Philadelphia, PA 19106, 215–597–7995—CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV

Mid-West

Regional Director, NPS, 210 S. 16th Street, Omaha, NE 68102, 402–221–3202—IA, IL, IN, KS, MI, MN, MO, NE, OH, WI

Pacific Northwest

Regional Director, NPS, 83 S. King Street, suite 212, Seattle, WA 98104, 206–553–4720—AK, ID, OR, WA

Rocky Mountain

Regional Director, NPS, P.O. Box 25287, Denver, CO 80225, 303–969–2500—CO, MT, ND, SD, UT, WY

Southeast

Regional Director, NPS, 75 Spring Street, 10th Fl., Atlanta, GA 30303, 404–331–2610—AL, FL, GA, KY, MS, NC, PR, SC, TN, VI

Southwest

Regional Director, NPS, P.O. Box 728, Santa Fe, NM 87501, 505–988–6705—AR, LA, NM, OK, TX

Western

Regional Director, NPS, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, 415–744–3972—AS, AZ, CA, GU, HI, NV, CM.

(Catalog of Federal Domestic Assistance #15.919)
(Title X, National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 2501–2514)

Dated: December 9, 1991.

William C. Walters,

Assistant Director, National Recreation Programs, National Park Service.

[FR Doc. 91–29897 Filed 12–13–91; 8:45 am]

BILLING CODE 4310–70–M

Delaware Water GAP National Recreation Area; Meeting

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the date for the next meeting of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of said meeting is required under the Federal Advisory Committee Act.

DATES: January 11, 1992.

TIME: 9 a.m.

LOCATION: New Jersey District Office, Delaware Water Gap, NRA, route 615, Walpack, New Jersey.

AGENDA: The agenda will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. Opportunities for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent;

Delaware Water Gap National Recreation Area Bushkill, PA 18324; 717–588–2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. route 209, Bushkill, Pennsylvania.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 91–29896 Filed 12–13–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 7, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 31, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Southern Pacific Railroad Locomotive No. 1673, Himmel Park, Tucson, 91001918

CALIFORNIA

Mendocino County

Ukiah Latitude Observatory, 432 Observatory Ave., Ukiah, 91001936

CONNECTICUT

New Haven County

Atwater, George, House, 1845 State St., Hamden, 91001921

Atwater—Linton House, 1804 State St., Hamden, 91001923

Johnson, Alphonso, House, 1 Gilbert Ave., Hamden, 91001922

FLORIDA

Leon County

Coles, Flavius C., Farmhouse, 411 Oakland Ave., Tallahassee, 91001911

Orange County

Lake Eola Heights Historic District, Roughly bounded by Hillcrest St., N. Hyder Ave., Ridgewood St. and N. Magnolia Ave., Orlando, 91001912

Palm Beach County

Sundy, John and Elizabeth Shaw, House, 106 S. Swinton Ave., Delray Beach, 91001910

KENTUCKY

Clark County

Thomson Neighborhood District, Roughly bounded by S. Main St., Moundale Ave., Boone Ave., S. Maple St. and W. Hickman St., Winchester, 91001925

MISSOURI

Howard County

Glasgow Commercial Historic District, 501–623 First St., 100–195 Market St., 603 Second St., Glasgow, 91001915

Moniteau County

Bruce, Louis, Farmstead Historic District, MO V N of jct. with MO Z, at Rock Enon Cr., Russellville vicinity, 91001916

Sullivan County

Quincy, Omaha and Kansas City Railroad Office Building, 117 N. Water St., Milan, 91001917

NEW JERSEY

Mercer County

Herring, Donald Grant, Estate, 52, 72 and 75 Arreton Rd., Princeton Township, Rocky Hill vicinity, 91001927

Middlesex County

Old School Baptist Church and Cemetery, 64–66 Main St., South River, 91001926

Morris County

Davenport—Demarest House (Dutch Stone Houses in Montville MPS), 140 Changebridge Rd., Montville, 91001934

Doremus, Henry, House (Dutch Stone Houses in Montville MPS), 490 Main Rd., Montville Township, Towaco, 91001928

Low, Effingham, House (Dutch Stone Houses in Montville MPS), 102 Hook Mountain Rd., Montville Township, Pinebrook, 91001930

Parlaman, Johnson, House (Dutch Stone Houses in Montville MPS), 15 Vreeland Ave., Montville, 91001933

Parsonage of the Montville Reformed Dutch Church (Dutch Stone Houses in Montville MPS), 107 Changebridge Rd., Montville, 91001931

Van Duyne, Martin, House (Dutch Stone Houses in Montville MPS), 292 Main Rd., Montville, 91001935

Van Duyne, Simon, House, 58 Maple Ave., Montville Township, Pinebrook, 91001932

Van Duyne—Jacobus House (Dutch Stone Houses in Montville MPS), 29 Changebridge Rd., Montville, 91001929

NEW YORK

New York County

Manhattan Avenue–West 120th–123rd Streets Historic District, 242–262 W. 120th St., 341–362 W. 121st St., 341–362 W. 122nd St., 344–373 123rd St., 481–553 Manhattan Ave. W side, New York, 91001920

Ulster County

Poppletown Farmhouse, Jct. of Old Post and Swarte Kill Rds., Esopus vicinity, 91001919

NORTH CAROLINA

Lincoln County

St. Luke's Church and Cemetery, 303–321 N. Cedar St., 322 E. McBee St., Lincolnton, 91001914

NORTH DAKOTA

Grant County

Hope Lutheran Church, W of ND 49 S of Lake Tschida, Elgin vicinity, 91001924

TEXAS

Tarrant County

Sinclair Building, 512 Main St., Fort Worth, 91001913.

[FR Doc. 91–29895 Filed 12–13–91, 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31942]

A & F Inc.—Lease and Operation Exemption—Andalusia & Conecuh Railroad Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease and operation by A & F, Inc., of a 2.91-mile line of railroad in Covington County, AL, owned by Andalusia & Conecuh Railroad Company, Inc., subject to standard labor protective conditions.

DATES: This exemption will be effective on January 15, 1992. Petitions for stay must be filed by December 26, 1991. Petitions for reopening must be filed by January 6, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 31942 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: William P. Jackson, Jr., Jackson & Jessup, P.C., P.O. Box 1240, Arlington, VA 22210.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc, room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

Decided: December 5, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–29940 Filed 12–13–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, January 16, 1992 in room N–3437 ABC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting which will begin at 9:30 a.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

I. Introduction and Swearing-in of New Council Members
II. Assistant Secretary's Report on:
  A. PWBA Priorities for 1992
  B. Report to Congress
  C. Miscellaneous Issues
  D. Naming of Council Chairperson and Vice Chairperson
III. Introduction and Orientation of New Members
IV. Report of Advisory Council Working Groups
V. Determination of Council Working Group for 1992
VI. Establish Council and Working Group Meeting Dates
VII. Statements from the Public
VIII. Adjourn

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before January 10, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before January 10, 1992.

Signed at Washington, DC this 10th day of December, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–29902 Filed 12–13–91; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, DG–8007 (which should be mentioned in all correspondence concerning this draft guide), is Proposed Revision 1 to Regulatory Guide 8.7, "Instructions for Recording and Reporting Occupational Radiation Exposure Data." This guide is being developed to describe an acceptable program for the preparation, retention, and reporting of records of occupational radiation exposures.

This draft guide is being issued to involve the public in the early stages of the development of regulatory positions in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by February 7, 1992.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 3rd day of December 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91–29932 Filed 12–13–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co.; Withdrawal of Application for Amendment to Facility Operating License;

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its October 10, 1989, application for proposed amendment to

Facility Operating License Nos. DPR–71 and DPR–62 for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have modified the facility Technical Specifications pertaining to the containment leakage limit.

The Commission has previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on January 10, 1990, (55 FR 930). However, by letter dated November 5, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 10, 1989, and the licensee's letter dated November 5, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the local public document room, located at William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland this 9th day of December 1991.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–29931 Filed 12–13–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–13204–OM, ASLBP No. 92–655–03–OM]

Lafayette Clinic; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register** 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Lafayette Clinic, Detroit, MI

Byproduct Material License No. 21–00864–02 EA91–130

This Board is being established pursuant to the request by Dr. Natraj Sitaram, an individual researcher at Lafayette Clinic (the Licensee), for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated October 3, 1991, entitled "Order Modifying License (Effective Immediately)" (56 FR 51415–51416, October 11, 1991). The Order modifies the license by Ordering, inter alia, that the Licensee shall not utilize Dr. Natraj Sitaram in any licensed activities for a period of three years from the effective date of the Order.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

G. Paul Bollwerk, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

George F. Tidey, 6431 Fannin Street, suite 3.204, Houston, TX 77030.

Issued at Bethesda, Maryland this 6th day of December, 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91–29930 Filed 12–13–91; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Nuclear Waste Technical Review Board's Panel on Structural Geology & Geoengineering will hold a meeting on January 22 and 23, 1992, on the seismic vulnerabilities of the proposed high-level waste repository at Yucca Mountain, Nevada. Panel members will examine the engineering and safety consequences of earthquakes to both surface and underground facilities of the proposed repository. Specific attention will be paid to the effects of earthquake-induced vibratory ground motion and fault movement during the preclosure and postclosure phases. Representatives from the Department of Energy (DOE), the Nuclear Regulatory Commission (NRC), the state of Nevada, the U.S. Geological Survey, the American Society of Civil Engineers, and the Electric Power Research Institute (EPRI) have been invited to make presentations. The two-day meeting will be held at the Hyatt Regency Irvine, 17900 Jamboree Boulevard, Irvine, California 92714; (714) 975–1234. The meeting, which is scheduled to run from 8:30 a.m. to 5 p.m. on January 22 and from 8:30 a.m. to 3:30 p.m. on January 23, is open to the public.

On Wednesday, January 22, the DOE and its consultants will present a summary of results from recent seismic hazard studies; they will then provide a series of presentations on seismic vulnerabilities. Topics will include the effects of nuclear test blasts on tunnels at the Nevada Test Site; the seismic vulnerabilities of surface and subsurface facilities; and how the DOE intends to use seismic vulnerability information and insights during site characterization. The NRC and the state of Nevada will follow with their perspectives on the use of seismic vulnerability information. The NRC-affiliated Center for Nuclear Waste Regulatory Analyses will present the results of its research on the response of underground openings to earthquakes.

On Thursday, January 23, the NRC will give its views on the identification of faulting and seismic hazards, and the U.S. Geological Survey will make a presentation on the likelihood of new faulting in previously unfractured rock. Panel members will then hear the EPRI's insights on seismic vulnerabilility and an update on its seismic hazard studies. Representatives of the American Society of Civil Engineers, Panel on High Level Waste Repository Design will describe that organization's efforts to develop seismic criteria for the proposed repository. The meeting will conclude with a general discussion of the use of seismic vulnerability information during site characterization.

Members of the public are welcome to attend the meeting as observers. Transcripts of the meeting will be available on library-loan basis from Victoria Reich, Board librarian, beginning March 15, 1992. For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: December 11, 1991.

Dennis G. Condie,

Deputy Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–29951 Filed 12–13–91; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Inherently Governmental Functions; Policy Letter

AGENCY: Office of Management and Budget, Executive Office of the

President, Office of Federal Procurement Policy.

ACTION: Policy letter on inherently governmental functions.

SUMMARY: The Office of Federal Procurement Policy (OFPP) proposes to publish a policy letter providing guidance to Executive Departments and agencies on (1) what functions are inherently governmental functions that must only be performed by Government officers and employees and (2) what proper contract functions so closely support Government officers and employees in their performance of inherently governmental functions that the terms and performance of those contracts require closer scrutiny from Federal officials.

DATES: Comments should be submitted to the Office of Federal Procurement Policy at the address below on or before February 14, 1992.

ADDRESSES: Written comments should be sent to Office of Management and Budget, Office of Federal Procurement Policy, ATTN: Richard A. Ong, 725 17th Street, NW., suite 9001, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW.—Suite 9001, Washington, DC 20503, (202) 395–3300.

SUPPLEMENTARY INFORMATION: OMB Circular No. A–76, Performance of Commercial Activities, defines "governmental function" (referred to as an "inherently governmental function" in the proposed policy letter, because of the general acceptance of that term, and intended to be synonymous with the A–76 term) but does not provide additional guidance on the meaning of that term. The proposed policy letter provides that guidance because executive agencies, Members of Congress, and the General Accounting Office have from time to time either requested guidance regarding, or inquired about, the propriety of awarding contracts for certain types of functions or administering contracts in certain ways.

Dated: December 10, 1991.

Allan V. Burman.

Administrator.

Policy Letter 92

To the Heads of Executive Departments and Establishments

Subject: Inherently governmental functions.

1. *Purpose.* This policy letter establishes Governmentwide policy relating to service contracting and inherently governmental functions. Its purpose is to assist Federal officials in avoiding an unacceptable transfer of official accountability to Government contractors.

2. *Authority.* This policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. 405.

3. *Exclusions.* Services obtained by personnel appointments and advisory committees are not covered by this policy letter.

4. *Background.* Agencies award service contracts for various reasons, such as to acquire special skills not available in the Government or to meet the need for intermittent services. Agency missions vary widely and so, too, can the mix of service contractors and civil servants. While it is clear that certain functions, such as the command of combat troops, may not be contracted, others, such as building maintenance and food services, may be. There is, however, some difficulty in determining whether services that fall between these extremes may be acquired by contract. Moreover, agencies have occasionally relied on contractors so as to raise questions about (1) the nature and effectiveness of agency oversight and control, and (2) the degree to which Government policy is created by private persons. Private persons may have interests that are not in harmony with those of the public, and may be beyond the reach of management controls otherwise applicable to public employees.

5. *Definitions.* The following definitions are provided for the purposes of this policy letter:

(a) "Service contract" as used in this policy letter means a "nonpersonal service contract." The Federal Acquisition Regulation (FAR) 37.101, defines a nonpersonal service contract as "a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees."

(b) An "inherently governmental function" has the same meaning as a Governmental function in section 6.e of Office of Management and Budget (OMB) Circular A–76. That section provides as follows:

A *Governmental function* is a function which is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgements in making decisions for the Government * * *. Governmental functions normally fall into two categories:

(1) *The act of governing;* i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions and other judicial functions; management of Government programs requiring value judgements, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) *Monetary transactions and entitlements,* such as tax collection and revenue disbursements; control of the treasury accounts and money supply; and the administration of public trusts.

6. *Policy.* It is the policy of the Federal Government to ensure proper official accountability for Government action. In matters of contracting policy, proper official accountability is implemented by:

(a) Using contracts to acquire needed services, when appropriate;

(b) Prohibiting the use of such contracts for the performance of inherently governmental functions, as defined in this letter (See appendix A for specific examples);

(c) Providing an enhanced degree of management controls and oversight when contracting for functions that are not inherently governmental but closely support the performance of such functions (see section 6(e) and appendix B for specific examples); and,

(d) Ensuring, in using the products of those contracts, that any final agency action reflects the conclusions of agency officials and complies with the laws and policies of the United States.

7. *Guidelines.* If a function proposed for contract performance is not found in appendix A, the following guidelines will assist agencies in the determining whether the function is inherently governmental.

(a) *General.* In the Executive Branch, an inherently governmental function is a function that involves the interpretation and the execution of the laws or policies

of the United States or the commissioning or appointment of officers of the United States. It involves the determination of policy and the direction and control of Federal employees or, in some cases, of the activities and property of private citizens. Such functions do not normally include gathering information or obtaining advice. They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; operation of libraries and cafeterias; housekeeping; and maintenance of the physical plant, vehicles, or other electrical or mechanical equipment. Inherently governmental functions do not encompass functions considered "commercial," as defined in OMB Circular No. A–76.

(b) *The exercise of discretion.* While inherently governmental functions necessarily involve the exercise of discretion, not every exercise of discretion is evidence that such a function is involved. Rather, the use of discretion must have the effect of committing the Federal Government to a course of action.

Exercising discretion involves deciding how or whether a course of action should be pursued. Discretionary authority exists when an official can choose one of two or more courses of action. A contract may thus properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued. Rather, the contractor is tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. However, the mere fact that decisions are made by the contractor in performing its duties is not determinative of whether it is performing an inherently governmental function.

(d) *Totality of the circumstances.* Distinguishing between inherently governmental functions and commercial activities oftentimes is difficult and depends upon an analysis of the facts of the case. Such analysis involves a number of factors, the presence or absence of any one not in itself being determinative of the issue. Nor will the same emphasis necessarily be placed on any one factor at different times, due to the changing nature of the Government's requirements.

The following considerations should apply when deciding whether contract performance or a contract award has effected or might effect a transfer of official responsibility:

(1) Congressional restrictions or authorizations;

(2) The complexity of the tasks to be performed;

(3) The ultimate user, consumer, or recipient of the contractor's work product;

(4) The duration of the contract;

(5) The degree to which official discretion is limited or extinguished, i.e., whether the contractor's involvement in basic agency functions is so extensive that the agency's ability to develop and consider options other than those provided by the contractor is restricted;

(6) The finality of any contractor's action affecting individual claimants or applicants, and whether or not review of the contractor's action is *de novo.* (i.e., to be effected without the appellate body's being bound by prior rulings or factual determinations) on appeal of his or her decisions to an agency official;

(7) The degree to which contractor activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures;

(8) The contractor's discretion to determine an appropriate penalty;

(9) The likelihood of the need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the contractor or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note that contracting for most guard services, armed or unarmed, is not necessarily proscribed by these policies);

(10) The contractor's ability to take action that will have significant economic, legal, or personal consequences for members of the public;

(11) The likelihood that the public would perceive the function as one that should be performed by Government personnel;

(12) The degree to which agencies have effective management procedures and policies that enable meaningful oversight of contractor performance, the resources available for such oversight, and the actual practice of the agency regarding oversight;

(13) The inapplicability to contractors of laws applicable to the Civil Service, or particular agencies, and the degree to which contract terms can be devised that provide effective substitutes for those laws, such as terms requiring special qualifications or equipment, background investigation of contractors, disciplinary measures for breaches of confidentiality or ethical standards, access to contractor premises or records, or the procuring of liability insurance;

(14) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons; and

(15) The record keeping requirements imposed on, or the records maintained by, the contractor that would permit systematic analysis of past contractor actions in the event that contractor performance is deemed to be unsatisfactory.

(e) *Agency authority to award nonpersonal service contracts.* The award of Government contracts is a responsibility that is committed by law to the sound discretion of public officials.

(f) *Preaward responsibilities.* Whether a function being considered for performance by contract is an inherently governmental function is an issue to be addressed prior to award.

(g) *Post-award responsibilities.* After award, even when a contract does not involve performance of an inherently governmental function, agencies should take steps to protect the public interest. Agencies need to play an active, informed commanding role in contract administration so that Government policies, rather than private ones, are being implemented. Such participation should be appropriate to the nature of the contract, and should leave no doubt that the contract is under the control of Government officials. This does not relieve contractors of their performance responsibilities under the contract.

(h) *Management controls.* When functions described in Appendix B are involved, additional management attention to the terms of the contract and the manner of performance is necessary. Examples of additional control measures are:

(1) Development of carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91–2, *Service Contracting;*

(2) Establishment of an audit plan for periodic review of such contracts by Government auditors;

(3) Conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications; and

(4) Physically separating contractor personnel from Government personnel at the work site.

(i) *Identification of source.* Contractor personnel must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials. All documents or reports produced by contractors are to

be marked as contractor products under a specific contract.

(j) *Degree of Reliance.* The extent of reliance on service contractors is not by itself a cause for concern. Government must, however, have a sufficient number of trained and experienced staff properly to manage and be accountable for Government programs. The greater the degree of reliance on such contractors the greater the need for oversight by agencies. What "core capability" is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question, the technical complexity of the project or its components, the technical capability and workloads of Federal oversight officials, and the importance of the activity.

(k) *Exercise of approving or signature authority.* Official responsibility to review and approve the work of contractors is a power reserved to Government officials alone. It should be exercised with a thorough knowledge of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment to these work products.

8. *Responsibilities.*

(a) *Heads of agencies.* Heads of departments and agencies are responsible for implementing the policies of this policy letter.

(b) *Federal Acquisition Regulatory Council.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein shall be incorporated in the FAR within 210 days of the effective date of this letter.

9. *Judicial review.* This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

10. *Information contact.* For information regarding this policy letter contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395–3300.

11. *Effective date.* This policy letter is effective 30 days after the date of issuance.

Allan V. Burman,

Administrator

Appendix A

The following is an illustrative list of functions considered to be inherently governmental functions:

1. The conduct of criminal investigations.

2. The control of prosecutions and performance of judicial functions (other than those relating to arbitration or other methods of alternative dispute resolution).

3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support arms.

4. The conduct of foreign relations and the determination of foreign policy.

5. The determination of agency policy, such as determining the substance and application of regulations.

6. The determination of Federal program priorities or budget requests.

7. The direction and control of Federal employees.

8. The direction and control of intelligence and counterintelligence operations.

9. The approval of Congressional testimony prepared for delivery by a Federal official.

10. The approval of agency responses to Congressional correspondence.

11. The selection or nonselection of individuals for Federal Government employment.

12. The approval of position descriptions and performance standards for Federal employees.

13. The determination of what Government property is to be disposed of and on what terms.

14. In Federal procurement activities,

(a) Determining what property or services are to be acquired by the Government;

(b) Participating as a voting member on any boards or in any meetings regarding evaluation of contractor proposals, to include final source selection;

(c) Approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(d) Awarding contracts;

(e) Administering contracts (including the order of changes in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services);

(f) Terminating contracts; and

(g) Determining whether contract costs are reasonable, allocable, and allowable.

15. The approval of agency responses to audit reports from an inspector general, the General Accounting Office, or other Federal audit entity.

16. The approval of Freedom of Information Act requests, other than routine requests that do not require the exercise of judgment.

17. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or basic eligibility to participate in Government programs.

18. The approval of Federal licensing actions and inspections.

19. The determination of budget policy, guidance, and strategy.

20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds.

21. Administration of public trusts.

Appendix B

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such requirements, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration. This is to ensure that appropriate agency control and accountability is preserved and to avoid the perception that the agency is improperly contracting for inherently governmental functions.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

2. Services that involve or relate to reorganization and planning activities.

3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

4. Services that involve or relate to the development of regulations.

5. Services that involve or relate to the evaluation of another contractor's performance.

6. Services in support of strategic acquisition planning.

7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

8. Contractor's providing technical evaluation of contract proposals.

9. Contractors' providing specialized expertise in the development of statements of work.

10. Contractors' providing support in preparing responses to Freedom of Information Act requests.

11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).

12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

13. Contractors' participation in any situation where it might be assumed that the contractors are agency employees or representatives.

14. Contractors' participating as nonvoting members of, or technical advisors to, a source selection board or source selection evaluation board.

15. Contractors' serving as arbitrators or as other persons hired to provide alternative methods of dispute resolution.

16. Contractors' construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

17. Contractors' providing inspection services.

18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and nonmilitary national security details.

[FR Doc. 91-29893 Filed 12-13-91; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Expedited Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice of Proposed Information Collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (chapter 35 of title 44, United States Code), this notice announces a request submitted by the Office of Personnel Management (OPM) to the Office of Management and Budget (OMB) for expedited clearance of a new information collection: Firefighter Survey Questionnaire. This information collection will be used to determine the position classification, pay, and work scheduling practices of State and local governments for firefighter personnel in connection with OPM's study of the pay and classification of Federal firefighter positions. This is a one-time information gathering exercise. Approximately 300 State and local governments will be contacted in the survey. OPM estimates that the average survey questionnaire will take approximately 5 to 60 minutes for a total burden of 245 hours.

OPM is requesting that OMB approve this information collection within 14 days after the date of publication in the **Federal Register**. A copy of the proposed questionnaire follows this notice.

DATE: Comments on this proposal should be received within 10 days after the date of this notice.

ADDRESSES: Send or deliver comments to:

Phyllis G. Foley, Director, Law Enforcement and Protective Occcupations Task Force, U.S. Office of Personnel Management, room 7H28, 1900 E Street, NW., Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002 Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Jeffrey Miller, (202) 606-3710 U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

BILLING CODE 6325-01-M

FIREFIGHTER SURVEY QUESTIONNAIRE

INTRODUCTION

The U.S. Office of Personnel Management (OPM) is conducting a study to determine whether the Federal Government should establish a separate classification and pay system for Federal firefighters. OPM will use the information from this survey to compare the Federal compensation system(s) to those of State and local governments. Please read the instructions below and complete the attached survey.

DEFINITIONS

I. FIREFIGHTER

As a full-time paid member of the fire department, combats, extinguishes, and prevents fires and performs rescue operations in structural, airfield, or forest/range environments. Performs maintenance on equipment and quarters. Wears protective clothing and breathing devices; drives fire and crash equipment; and operates a variety of firefighting equipment, such as hoses, extinguishers, ladders, and axes. May hold national certification as an emergency medical technician. (Included are nonsupervisory positions at the entry, full performance, and advanced levels.)

II. FIRST-LEVEL FIREFIGHTER SUPERVISOR

Coordinates the activities of firefighters assigned to a structural pumper, crash vehicle, or other similar vehicle. Typically inspects vehicle and equipment, leads crew activities when training or responding to fire alarms, and assesses the proficiency of crew members. (Excluded are positions responsible for supervising multiple crews of firefighters.)

INSTRUCTIONS

So that we can produce estimates with a high degree of accuracy and complete our study on a timely basis, please complete this questionnaire within the next 4 weeks. For further information on this survey, please call Jeffrey Miller or Phyllis Foley on (202) 606-3710. Please send the completed questionnaire in the enclosed envelope to the following address:

U.S. Office of Personnel Management
Office of Compensation Policy
1900 E Street, NW. Room 7H28
Washington, DC 20415

Thank you for your cooperation.

PUBLIC BURDEN INFORMATION: *Public burden reporting for this collection of information is estimated to average approximately 60 minutes per full response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP-500, Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-), Washington, DC 20503.*

OMB Approval _____ Expiration Date: _____

FIREFIGHTER SURVEY QUESTIONNAIRE

In the box below, please identify yourself and your organization. Your name and telephone number is requested for follow-up purposes only.

Jurisdiction/Organization: _____

Address: _____

_____

_____

Person completing the questionnaire:

Name: _____

Title: _____

Telephone Number: (___) _____

Facsimile Transmission Number: (___) _____

1. *Do you employ full-time permanent firefighters? IF THE ANSWER IS NO, SKIP THE REMAINING QUESTIONS, AND RETURN THE QUESTIONNAIRE IN THE ENCLOSED ENVELOPE.*

   a. [___] Yes b. [___] No

2. *If volunteer firefighters are also regularly performing firefighting work, please indicate how many:_____*

3. *Please provide the qualification requirements for entry-level firefighters in your jurisdiction. Include education and work experience required and/or attach a copy of a representative job vacancy announcement.*

4. *Please attach a description of any medical qualifications and physical standards for both entry and full performance level firefighters.*

5. *What are your recruitment sources? If more than one source is used, indicate the approximate percentage of applicants who come from each source.*

   a. [___%] High School Graduate d. [___%] Other State/Local Governments

   b. [___%] College Graduate e. [___%] Private Companies

   c. [___%] Ex-military f. [___%] Federal Government

   g. [___%] Other (specify): _____

6. *Is a job evaluation plan used in classifying firefighter positions? If the answer is "no", proceed to question number 8.*

Nonsupervisory Positions	Supervisory Positions
a. [___] Yes	c. [___] Yes
b. [___] No	d. [___] No

7. *If so, what kind of plan is used? Please attach a copy of the job evaluation plan.*

   a. [__] Labor Market Pricing
   b. [__] Point Factor Comparison
   c. [__] Narrative Position Classification Format
   d. [__] Other (specify): _____

8. *Please attach position descriptions for full performance and first-level supervisory firefighters.*

9. *Please attach a copy of the organizational chart of the fire department and/or a typical fire station. On the organization chart, indicate which positions are nonexempt under the Fair Labor Standards Act.*

10. *To enhance our understanding of your organization, please provide the following information effective June 1991. Do not leave any item unanswered. If any item below is not applicable, write "N/A" in the space for that item. Do not include longevity pay, overtime, or any other pay differentials.*

Federal Firefighter Rank	Your Organization's Corresponding Rank	Number of Full-Time Positions	Regular Salary Range*				Average Current Base Salary* as of June 1991
			Min.	Max.	Min # of Years to Max.	No. of Salary Steps	
I. Entry-Level Firefighter							
II. Full Performance Firefighter							
III. Advanced-Level Firefighter							
IV. First-Level Supervisor							
V. Second-Level Supervisor							
VI. Third-Level Supervisor							
VII. Fourth-Level Supervisor							

* *Do not include longevity pay, overtime, or any other pay differential.*

11. ***Approximately how many years on average do firefighters who are promoted to a higher rank spend in their former rank before being promoted?***

a. *From entry level to full performance level:* _____ *years*
b. *From full performance level to advanced level:* _____ *years*
c. *From full performance or advanced level to first-level supervisor:* _____ *years*
d. *From first-level supervisor to second-level supervisor:* _____ *years*
e. *From second-level supervisor to third-level supervisor:* _____ *years*
f. *From third-level supervisor to fourth-level supervisor:* _____ *years*
g. _____: _____ *years*
h. _____: _____ *years*

12. *Please depict a typical firefighter's work schedule over a two-week period. Follow the format provided in our example below. (You may wish to use additional pages if your schedule cannot be adequately depicted within a two-week period.)*

(Example)

WORK SCHEDULE

HOURS ↓ / DAYS →	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	25	49	73	97	121	145	1	25	49	73	97	121	145
2	26	50	74	98	122	146	2	26	50	74	98	122	146
3	27	51	75	99	123	147	3	27	51	75	99	123	147
4	28	52	76	100	124	148	4	28	52	76	100	124	148
5	29	53	77	101	125	149	5	29	53	77	101	125	149
6	30	54	78	102	126	150	6	30	54	78	102	126	150
7	31	55	79	103	127	151	7	31	55	79	103	127	151
8	32	56	80	104	128	152	8	32	56	80	104	128	152
9	33	57	81	105	129	153	9	33	57	81	105	129	153
10	34	58	82	106	130	154	10	34	58	82	106	130	154
11	35	59	83	107	31	155	11	35	59	83	107	131	155
12	36	60	84	108	132	156	12	36	60	84	108	132	156
13	37	61	85	109	133	157	13	37	61	85	109	133	157
14	38	62	86	110	134	158	14	38	62	86	110	134	158
15	39	63	87	111	135	159	15	39	63	87	111	135	159
16	40	64	88	112	136	160	16	40	64	88	112	136	160
17	41	65	89	113	137	161	17	41	65	89	113	137	161
18	42	66	90	114	138	162	18	42	66	90	114	138	162
19	43	67	91	115	139	163	19	43	67	91	115	139	163
20	44	68	92	116	140	164	20	44	68	92	116	140	164
21	45	69	93	117	141	165	21	45	69	93	117	141	165
22	46	70	94	118	142	166	22	46	70	94	118	142	166
23	47	71	95	119	143	167	23	47	71	95	119	143	167
24	48	72	96	120	144	168	24	48	72	96	120	144	168

In this example, the firefighter reports to work on day 1 at 0800 hours and works until the same time on the following day. This schedule is repeated on day 4. On day 7, the firefighter reports to work at 1600 hours and works until the same time on day 8. These work hours are repeated on days 10 and 11.

WORK SCHEDULE

DAYS--->

1	25	49	73	97	121	145
2	26	50	74	98	122	146
3	27	51	75	99	123	147
4	28	52	76	100	124	148
5	29	53	77	101	125	149
6	30	54	78	102	126	150
7	31	55	79	103	127	151
8	32	56	80	104	128	152
9	33	57	81	105	129	153
10	34	58	82	106	130	154
11	35	59	83	107	131	155
12	36	60	84	108	132	156
13	37	61	85	109	133	157
14	38	62	86	110	134	158
15	39	63	87	111	135	159
16	40	64	88	112	136	160
17	41	65	89	113	137	161
18	42	66	90	114	138	162
19	43	67	91	115	139	163
20	44	68	92	116	140	164
21	45	69	93	117	141	165
22	46	70	94	118	142	166
23	47	71	95	119	143	167
24	48	72	96	120	144	168

1	25	49	73	97	121	145
2	26	50	74	98	122	146
3	27	51	75	99	123	147
4	28	52	76	100	124	148
5	29	53	77	101	125	149
6	30	54	78	102	126	150
7	31	55	79	103	127	151
8	32	56	80	104	128	152
9	33	57	81	105	129	153
10	34	58	82	106	130	154
11	35	59	83	107	131	155
12	36	60	84	108	132	156
13	37	61	85	109	133	157
14	38	62	86	110	134	158
15	39	63	87	111	135	159
16	40	64	88	112	136	160
17	41	65	89	113	137	161
18	42	66	90	114	138	162
19	43	67	91	115	139	163
20	44	68	92	116	140	164
21	45	69	93	117	141	165
22	46	70	94	118	142	166
23	47	71	95	119	143	167
24	48	72	96	120	144	168

Use this space for explanation if necessary.

13. *Please attach a pay schedule of basic pay rates for firefighter positions, as of June 1991, to the back of the questionnaire and also explanatory material on how the amount of any annual pay adjustment is determined.*

14. *Are the pay rates for firefighters determined through collective bargaining? (CHECK ONE)*

a. [_] Yes b. [_] No

15. *Are the firefighters covered by a different pay system from the pay system for non-firefighter employees in your jurisdiction?*

a. [_] Firefighters are covered by a separate pay system.
b. [_] Firefighters are covered by the same pay system as law enforcement personnel.
c. [_] All employees, regardless of duty or function, are covered by the same pay system.
d. [_] Other, specify: _____

16. *Please indicate the amount of longevity pay provided based upon length of service or time in rank for employees in this occupation.*

a. [_] Not applicable; longevity pay not provided
b. [_] Longevity pay, as follows:

Years of Service	Percent of Salary	or	Dollar Amount
_____	_____ Percent		$_____
_____	_____ Percent		$_____
_____	_____ Percent		$_____
_____	_____ Percent		$_____
_____	_____ Percent		$_____
_____	_____ Percent		$_____
_____	_____ Percent		$_____
_____	_____ Percent		$_____

17. *Do you provide any of the following pay differentials for firefighters? If so, please attach your policy on payment of differentials. (PLEASE CHECK THE BOX UNDER "YES" OR "NO" FOR EACH TYPE OF PAY DIFFERENTIAL. IF "YES," PLEASE ENTER THE PERCENT OF BASE SALARY OR THE DOLLAR AMOUNT PAID PER HOUR FOR THE DIFFERENTIAL.)*

Pay Differential	Yes	No	Percent of Salary	OR	Dollar Amount Per Hour
a. Night differential - (From ___:___ am/pm to ___:___ am/pm)					$___.___
b. Standby pay					$___.___
c. Holiday pay					$___.___
d. Sunday pay					$___.___
e. Equipment/Vehicle operation					$___.___
f. Retention bonus					$___.___
g. Associates degree					$___.___
h. Bachelors degree					$___.___
i. Graduate study or degree					$___.___
j. Technician pay (e.g., emergency medical technician) Specify:					$___.___
k. Pay for hazardous material handling					$___.___
l. Uniform allowance					$___.___
m. Other Specify:					$___.___

18. *Do you provide any of the following overtime compensation to nonsupervisory firefighters?*

PLEASE CHECK THE BOX UNDER "YES" OR "NO" FOR EACH TYPE OF OVERTIME COMPENSATION. IF "YES", ENTER EITHER THE PERCENT OF BASE SALARY OR THE DOLLAR AMOUNT PROVIDED. ALSO PROVIDE THE AVERAGE OVERTIME HOURS PER EMPLOYEE AND THE PERCENT OF EMPLOYEES WHO RECEIVED OVERTIME PAY IN CALENDAR YEAR 1990 FOR EACH TYPE.

Overtime Compensation	Yes	No	Percent of Salary	OR	Dollar Amount Per Hour	Average Number of Overtime Hours in 1990	Percent of Employees Receiving Overtime Compensation in 1990
a. Overtime Pay					$____.____		
b. Compensatory Time in lieu of Pay					$____.____		
c. Roll Call Pay					$____.____		
d. Other Specify:					$____.____		
					$____.____		

19. *Is there a limit on the amount of overtime pay an employee can receive? (CHECK ONE.)*

a. [_] No
b. [_] Yes, there is a limit on all firefighters. Please enter the limit. $____.____ OR _____ % of Salary.
c. [_] Yes, there is a limit for some firefighters. Please specify which firefighters:_____ and enter the limit. $____.____ OR _____ % of Salary.

20. *What ranks or levels of employees are eligible to receive some form of overtime compensation? (CHECK ONE.)*

a. [_] All nonsupervisory firefighters
b. [_] First-level supervisors
c. [_] Other, specify: _____

21. *What is the minimum age and years of service required to qualify for retirement? Age: ____ Years of Service: ____*

22. *Are you experiencing significant recruitment and/or retention problems with firefighters? If so, please provide any recent statistics (such as turnover or quit rates) that document these problems. Please provide turnover rates based on voluntary separations only, excluding retirements and involuntary terminations.*

a. [_] Yes
b. [_] No

Once again, thank you for your assistance in completing this questionnaire.

[FR Doc. 91-29888 Filed 12-13-91; 8:45 am]
BILLING CODE 6325-01C

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leota M. Shelkey, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on November 15, 1991 (56 FR 58097). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1 and October 31, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1991.

Schedule A

No Schedule A authorities were established or revoked during October.

Schedule B

The following exception was established:

National Endowment for the Humanities

One position of Humanities Administrator, Guides Program, Reference Materials Program, Division of Research Programs. Effective October 16, 1991.

Schedule C

Department of Agriculture

One Director, Public Liaison to the Director, Office of Public Affairs and Press Secretary. Effective October 16, 1991.

Agency for International Development

One Director, Office of Women in Development to Assistant Administrator, Bureau of Research and Development. Effective October 17, 1991.

One Special Assistant to the Director, White House Liaison. Effective October 30, 1991.

Commodity Futures Trading Commission

One Economist to a Commissioner. Effective October 24, 1991.

Department of Commerce

One Congressional Liaison Specialist to the Director, Congressional Affairs Staff. Effective October 17, 1991.

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective October 24, 1991.

Department of Defense

One Private Secretary to the Principal Deputy Assistant Secretary of Defense (International Security Policy). Effective October 9, 1991.

One Staff Assistant to the Assistant Secretary of Army (Financial Management). Effective October 9, 1991.

One Special Assistant for Trade Policy to the Director, Washington Headquarters Service. Effective October 9, 1991.

Department of Education

One Special Assistant to the Director, Compensatory Education Programs. Effective October 16, 1991.

One Special Assistant to the Administrator for Management Services. Effective October 16, 1991.

One Special Assistant to the Assistant Secretary for the Office of Educational Research and Improvement. Effective October 24, 1991.

One Confidential Assistant to the Deputy Under Secretary for Management. Effective October 27, 1991.

One Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective October 27, 1991.

Department of Energy

One Special Assistant to the Deputy Assistant Secretary for International Affairs. Effective October 4, 1991.

One Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison, Office of Congressional and Intergovernmental Affairs. Effective October 24, 1991.

One Public Affairs Specialist to the Press Secretary, Office of Public Affairs. Effective October 24, 1991.

One Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs. Effective October 24, 1991.

One Special Assistant to the Director, Division of Congressional Affairs and State Liaison, Office of External Affairs, Federal Energy Regulatory Commission. Effective October 31, 1991.

Department of Transportation

One Staff Assistant to the Special Assistant, Office of the Secretary. Effective October 7, 1991.

One Deputy Executive Secretary for Policy to the Director, Executive Secretariat. Effective October 30, 1991.

Federal Deposit Insurance Corporation

One Administrative Assistant to the Chief Executive Officer, Resolution Trust Corporation. Effective October 31, 1991.

General Services Administration

One Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective October 9, 1991.

Department of Health and Human Services

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective October 9, 1991.

Department of Housing and Urban Development

One Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development. Effective October 4, 1991.

One Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations. Effective October 30, 1991.

Department of the Interior

One Special Assistant to the Director, Minerals Management Service. Effective October 24, 1991.

Department of Justice

One Law Clerk (Special Assistant) to the Deputy Assistant Attorney General. Effective October 17, 1991.

One Staff Assistant to the Principal Associate Deputy Attorney General. Effective October 24, 1991.

One Staff Assistant to the Assistant to the Attorney General. Effective October 28, 1991.

One Secretary (Typing) to the Director, Office of Public Affairs. Effective October 28, 1991.

Department of Labor

One Executive Assistant to the Assistant Secretary for Employment Standards. Effective October 16, 1991.

One Special Assistant to the Assistant Secretary, Veterans' Employment and Training Service. Effective October 4, 1991.

Office of Government Ethics

One Executive Secretary to the Director. Effective October 30, 1991.

Office of National Drug Control Policy

One Special Assistant to the Director and White House Liaison (Executive Secretariat). Effective October 16, 1991.

Office of Personnel Management

One Director of Intergovernmental Affairs/Special Assistant to the Deputy Director. Effective October 17, 1991.

Small Business Administration

One Policy Advisor to the Deputy to the Associate Deputy Administrator for Finance, Investment and Procurement. Effective October 16, 1991.

One Special Assistant to the Regional Administrator, Region IV, Atlanta, GA. Effective October 31, 1991.

Department of State

One Research Assistant to the Principal Deputy Assistant, Office of Legislative Affairs. Effective October 4, 1991.

One Program Officer to the Principal Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective October 24, 1991.

One Staff Assistant to the Special Assistant (White House Liaison) to the Assistant Secretary, Bureau of Public Affairs. Effective October 31, 1991.

United States Trade Representative

One Confidential Secretary to the United States Trade Representative. Effective October 30, 1991.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp. P.218.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–29889 Filed 12–13–91; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 9, 1992
Thursday, January 23, 1992
Thursday, February 6, 1992
Thursday, February 20, 1992

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committees' primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caususes may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These repors are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committeee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 6060–1500.

Dated: December 9, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 91–29890 Filed 12–13–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New Forms

Form 12–F, File No. 270–104.
Form 12–FA, File No. 270–104.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission (the "Commission") has submitted for OMB approval proposed Form 12–F (initial submission of information pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934) and proposed Form 12–FA (submission of information pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 other than in connection with an initial submission).

The Commission's staff estimates that up to 1,800 foreign companies may avail themselves of Rule 12g3–2(b) and the proposed forms per year. The preparation of each form should take approximately one burden hour per response per form. Submissions under current Rule 12g–2(b) and under proposed Forms 12–F and 12–FA, however, take less time to prepare than other registration forms and periodic reports under the Securities Exchange Act of 1934 currently applicable to foreign issuers. The two forms are designed to serve as cover sheets with respect to information already required to be submitted under Rule 12g3–2(b) and thus the adoption of cover forms for submissions under Rule 12g3–2(b) is not expected to increase the burden hours currently applicable to Rule 12g3–2(b). The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission,

450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Project No. 3235–AD72), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 2, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29942 Filed 12–13–91; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension

Regulation A—File No. 270–110.
Rule 13e–1—File No. 270–255.
Rule 17Ad–4(b) and (c)—File No. 270–264.
Rule 17Ad–11—File No. 270–261.
Rule 17Ad–13—File No. 270–263.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission (Commission) has submitted a request for extension for the following:

Regulation A is a stream-line registration provision for small issues, affecting 326 filers at an estimated 912 burden hours per response.

Rule 13e–1 requires an issuer to file a statement with the Commission before purchasing any of its equity securities during the course of a tender offer by another person. Currently 20 submissions are filed annually pursuant to Rule 13e–1 at an estimated 260 burden hours per response.

Rule 17Ad–4 (b) and (c) requires transfer agents to prepare, maintain, and under certain circumstances, file a notice of exempt status or loss of exempt status with their appropriate regulatory authority. Currently 70 transfer agents incur an estimated average burden of 30 minutes in order to comply with this rule.

Rule 17Ad–11 requires transfer agents to file reports regarding aged record differences, buy-ins, and failure to post certificate detail to master security holder and subsidiary files. An estimated 150 respondents incur an estimated average burden of 30 minutes to comply with this rule.

Rule 17Ad–13 requires certain registered transfer agents to file annually a study and evaluation of internal accounting control. Currently 200 respondents incur an estimated average burden of 175 hours to comply with this rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 2, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29943 Filed 12–13–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30043; File No. SR–DTC–91–22]

Self-Regulatory Organizations; The Depository Trust Co.; Notice of Filing of a Proposed Rule Change Relating to the Elimination of Certain Urgent Withdrawals of Corporate Issues Settling in Next-Day Funds

December 6, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 14, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–91–22) as described in Items I, II and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by DTC consists of DTC's request for permanent approval of its elimination of most urgent withdrawals ("CODs") [1] of corporate issues settling in DTC's Next-Day Funds Settlement ("NDFS") system that are not "full" FAST issues.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Certificates can be withdrawn from DTC in three ways:

(1) Withdrawals-by-Transfer ("WTs"), in which certificates are transferred routinely to the name of a participant's customer or another party. Depending on the issue, its transfer agent and the agent's location, newly registered certificates are generally available one to two weeks after DTC has received WT instructions.

(2) Rush Withdrawals-by-Transfer ("RWTs"), in which DTC expedites the transfer of certificates to the name of a participant's customer or another party. Depending on the issue, its transfer agent, its registrar and the agent's and registrar's locations, newly registered certificates for United States issues are generally available one to three days after DTC has received RWT instructions (six days for Canadian issues).

(3) COD withdrawals, in which certificates registered in the name of DTC's nominee, Cede & Co., or bearer certificates are released directly from the depository.

The reasons for requesting permanent approval of the discontinuance of the subject NDFS corporate CODs are to realize cost savings and improve safety by eliminating a service that is no longer needed. Permanent elimination of this

[1] "COD" is an acronym for Certificate on Demand.

[2] Under DTC's Fast Automated Securities Transfer ("FAST") program, DTC leaves securities with transfer agents in the form of balance certificates registered in the depository's nominee name, Cede & Co. The balance certificates are adjusted daily for DTC deposit and withdrawal activity. A "full" FAST issue is one where the transfer agent provides CODs as well as withdrawals-by-transfer ("WTs").

class of CODs will enable DTC to complete the elimination of storage for large numbers of corporate certificates in an assortment of round-lot quantities to match participants' most likely requirements for CODs, if CODs were needed, there by reducing both risk of loss and vault costs for storage, security and personnel.

On July 21, 1989, the Commission gave temporary approval to a pilot program for the elimination of the subject CODs.[3] Simultaneously, DTC introduced its rush withdrawal-by-transfer ("RWT") service which was effective upon filing.[4] DTC's analysis of statistics for transfer agent RWT turnaround for the period from the July 1989 start of the pilot program until the filing of this proposed rule change enabled DTC to pinpoint and eliminate bottlenecks in the service. Statistics also indicate that the average daily number of RWTs dropped dramatically during the course of the pilot program, indicating that participants are able to anticipate their withdrawal needs sufficiently in advance to rely on ordinary WTs rather than RWTs for their certificates.[5]

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will reduce unnecessary costs in the safeguarding and other processing of securities certificates in the national clearance and settlement system. It will reduce vault and other physical security costs and concerns by substituting "jumbo" certificates for smaller denominations It will eliminate a costly urgent withdrawal structure and staffing that is no longer needed on a routine basis and should reduce risks associated with that structure. It will cease to mutualize a cost that is better addressed and priced as exception processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members. Participants or Others

From time to time, beginning in 1985, DTC proposed in writing various versions of the proposed rule change to its participants. Copies of written communications to and from participants and others were included as Exhibits 2(a) and 2(b) to File No. SR-DTC-89-01. While many comments were favorable, certain participants expressed reservations about the elimination of the subject CODs.

In response to these concerns, DTC decided to retain CODs for so-called "full" FAST issues and developed a new service designated "RWT" for rush transfer. In addition, participants were directed to phone DTC's Expediting Department whenever an RWT is especially time-sensitive, for withdrawals of issues for which transfer services are no longer available (e.g., when DTC has "frozen" WTs for any reason and for special situations where neither a WT nor an unexpedited RWT will meet participants' needs. In addition, DTC filed for Commission approval its proposed Deposit and Withdrawal at Custodian ("DWAC") service for use in some of the special situations.[6] Finally, DTC identified situations where it would continue to maintain vault inventory in so-called "workable denominations". At participant request, DTC changed RWT so participants could get a newly registered certificate even when DTC has enough vault inventory to honor the RWT with a COD.

A number of participants subsequently withdrew their objections to the elimination of certain corporate CODs, in some cases because the steps listed above answered their objections and in other cases because their experience during the pilot phase that began with the Commission's temporary approval in 1989 had alleviated their concerns.[7] DTC is not aware that any participant, or any customer of a participant, has suffered a financial loss from a failure to receive a timely withdrawal when needed. DTC believes none of its participants has a current objection to the permanent implementation of this rule change with respect to those corporate issues to which it applies.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section.

Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File N9. SR-DTC-91-22 and should be submitted by [insert date 21 days from the date of publication in the **Federal Register**].

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29949 Filed 12-13-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30055; File No. SR-MCC-91-06]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Implementation of Operating System Enhancements

December 10, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 27, 1991, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the

[3] Securities Exchange Act Release No. 27052 (July 31, 1989), 54 FR 31600 [File No. SR-DTC-89-01].

[4] Securities Exchange Act Release No. 26960 (July 5, 1989), 54 FR 28135 [File No. SR-DTC-89-11].

[5] See Exhibit 3 to the filing.

[6] Securities Exchange Act Release No. 29952 (November 25, 1991), 56 FR 59307 [File No. SR-DTC-91-16].

[7] See File No. SR-DTC-89-01 and Exhibit 2 to the filing.

[1] 15 U.S.C. 78s(b) (1988).

proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

MCC has proposed a rule change announcing the implementation of enhancements to MCC's operating systems ("Enhanced System"). The Enhanced System's implementation date is Monday, December 9, 1991.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to announce the implementation of the Enhanced System. The implementation of, and conversion to, the Enhanced System is scheduled for Monday, December 9, 1991. MCC has provided its participants with updates and training sessions over the past several months. Beginning in August 1991, MCC activated the MST System User Training database for use by its participants. This training environment has provided an opportunity for participants to learn or refresh their knowledge of the Enhanced System and has allowed participants to provide a variety of input and inquiry transactions and to review new reports. Formal refresher training sessions were held in New York and Chicago during the week of November 11, 1991, and a Network-wide test, consisting of participants and MCC operations staff, was conducted on November 16, 1991.

On February 12, 1991, the Commission approved the rule changes which reflect the Enhanced System and certain services to Participants.[2] Effective on Monday, December 9, 1991, the implementation date, MCC will formally implement those rule changes.

No changes have been made to those rules changes since the date of the Commission's February 12, 1991, Approval order.[3]

The proposed rule changes are consistent with section 17A of the Act [4] in that they provide for the prompt, accurate and efficient clearance and settlement of securities transactions.

B. SRO's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has not received any written comments from its participants. Participant comments received from the recent Network-wide Enhanced System testing have been positive.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [5] and subparagraph (e) of Securities Exchange Act Rule 19b-4 [6] because the proposed rule change effects a change in an existing service of MCC that does not adversely affect the safeguarding of securities or funds in the custody or control of MCC or for which it is responsible and does not significantly affect the respective rights or obligations of MCC or its participants. The proposed rule change merely announces the implementation date of a system enhancement that already has received Commission approval.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR-MCC-91-06 and should be submitted by January 6, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29944 Filed 12-13-91; 8:45 am]

FILLING CODE 8010-01-M

[Release No. 34-30056; File No. SR-MSTC-91-06]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Implementation of Operating System Enhancements

December 10, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 27, 1991 the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

MSTC has proposed a rule change announcing the implementation of enhancements to MSTC's operating systems ("Enhanced System"). The Enhanced System's implementation date is Monday, December 9, 1991.

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[2] Securities Exchange Act Release No. 28877 (February 12, 1991), 56 FR 6892 (File No. SR-MSTC-90-01).

[3] *Id.*

[4] 15 U.S.C. 78q-1 (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[6] 17 CFR 240.19b-4(e) (1991).

[7] *Supra*, note 2.

[8] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b) (1988).

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to announce the implementation of the Enhanced System. The implementation of, and conversion to, the Enhanced System is scheduled for Monday, December 9, 1991. MSTC has provided its participants with updates and training sessions over the past several months. Beginning in August 1991, MSTC activated the MST System User Training database for use by its participants. This training environment has provided an opportunity for participants to learn or refresh their knowledge of the Enhanced System and has allowed participants to provide a variety of input and inquiry transactions and to review new reports. Formal refresher training sessions were held in New York and Chicago during the week of November 11, 1991, and a Network-wide test, consisting of participants and MSTC operations staff, was conducted on November 16, 1991.

On February 12, 1991, the Commission approved the rule changes which reflect the Enhanced System and certain services to Participants.[2] Effective on Monday, December 9, 1991, the implementation date, MSTC will formally implement those rule changes. No changes have been made to those rule changes since the date of the Commission's February 12, 1991, Approval Order.[3]

The proposed rule changes are consistent with section 17A of the Act [4] in that they provide for the prompt, accurate and efficient clearance and settlement of securities transactions.

B. SRO's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MSTC has not received any written comments from its participants. Participant comments received from the recent Network-wide Enhanced System testing have been positive.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [5] and subparagraph (e) of Securities Exchange Act Rule 19b–4 [6] because the propose rule change effects a change in an existing service of MSTC that does not adversely affect the safeguarding of securities or funds in the custody or control of MSTC or for which it is responsible and does not significantly affect the respective rights or obligations of MSTC or its participants. The proposed rule change merely announces the implementation date of a system enhancement that already has received Commission approval.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–91–06 and should be submitted by January 6, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29945 Filed 12–13–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30049; No. SR–PSE–91–36]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Fees for Appeals of Disciplinary Actions

December 9, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On December 6, 1991, the PSE submitted to the Commission an amendment to the proposed rule change to clarify certain language in the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, submits this rule filing to amend Rule 10.8(a) of the Rules of the Board of Governors of the PSE ("Board").

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

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[2] Securities Exchange Act Release No. 28877 (February 12, 1991), 56 FR 6892 (File No. SR–MSTC–90–01).

[3] *Id.*

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[6] 17 CFR 240.19b–4(e) (1991).

[7] *Supra*, note 2.

[8] 17 CFR 200.30–3(a)(12) (1991).

[1] See letter from Rosemary A. MacGuiness, Senior Counsel, PSE to Diana Luka, Commission, dated December 6, 1991.

The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The procedures for appealing disciplinary decisions are contained in PSE Rule 10.8. Currently, there is no filing fee for submitting an appeal. The proposed amendment to Rule 10.8 would require a $500 deposit,[2] refundable under certain conditions.

After a request for review is filed, the matter is referred to an Appeals Committee ("Appeals Committee") appointed by the Board, which currently consists of all public Governors on the Board. Currently, there are four public Governors. For appeals that require no more than one meeting of the public Governors, a fee of $250 is paid to each Governor for their time and effort in reviewing the matter. For complex cases, a fee of $250 is paid to each Governor for each meeting that is required. In addition, the Appeals Committee, or Review Board if different from the Appeals Committee,[3] must review the record of the matter, which usually consists of the transcripts from the original hearing. Transcripts for a hearing typically cost the Exchange between $200 to $500, depending on the length of the hearing, and depending upon whether the matter was taped, or whether a court reporter was brought in. Excluding the time that is devoted to each appeal by the Exchange staff administrator, the attorney who is handling the case, and other Exchange staff who are at times called upon for specific matters, the Exchange spends approximately $1,200 to $1,500 for each appeal.

The ease with which an appeal can be filed, and the fact that a member, member organization, or a person associated with a member or member organization, ("member") can receive a "second look," at no cost to the member, creates the potential for an abuse of the process. Rather than establish a remedial procedure to deal with situations where the process has been abused, the Board of Governors has determined that the establishment of an appeal filing fee deposit for disciplinary decisions is more appropriate. For a member to request an appeal of a disciplinary decision, $500 will be required to be deposited with the Exchange, which will be applied toward the costs incurred as described above, if the Appeals Committee determines that the original decision should be upheld. However, if the member requesting review is successful (*e.g.*, the member requests that the decisions be reversed, and the Appeals Committee agrees with the request), the deposit will be returned to the member, and the Exchange will be responsible for all costs incurred. For matters that are reversed in part, and upheld in part, the Appeals Committee will have the discretion as to the amount that may be returned. The Appeals Committee also will have the discretion to waive the deposit, based upon cases of hardship or other compelling reasons.

The PSE believes that a deposit will have the effect of deterring frivolous appeals, without the need for a remedial sanction process, yet it will not deter a member from filing a request for review when the member believes that there are good grounds for reversal of a decision. The establishment of the deposit will not in any way interfere with a member's fundamental right to have a decision reviewed by the Board, but will, when the decision is upheld, help to directly cover the costs incurred, without the need for the general membership population to fund the entire process.

The proposed rule filing is consistent with section 6(b)(4) of the Act in that it provides for an equitable allocation of fees among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed amendment imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were not solicited from members or others, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–91–36 and should be submitted by January 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29941 Filed 12–13–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30053; File No. SR–PTC–91–13]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Proposed Rule Change Relating to the Close-Out of Repurchase Accounting Records

December 9, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 4, 1991, Participants Trust Company ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[2] The PSE proposes to require a $500 fee for the appeal of each decision filed with the Exchange. Therefore, if more than one party appeals a decision, the PSE would require only a $500 fee for the appeal under the proposal.

[3] PSE Rule 10.8(b) provides that either the Appeals Committee or the PSE Board of Governors may conduct reviews of disciplinary proceedings. The body conducting the review is referred to as the "Review Board."

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies the procedures to be followed for closing out PTC's repurchase accounting records when the underlying repurchase agreement ("repo") has been closed out by the repo buyer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule filing is to modify PTC's rules to clarify the procedures to be followed for closing out PTC's repo accounting records when the underlying repurchase agreement has been closed out by the repo buyer. PTC provides its participants with a repo accounting facility to facilitate the transfer of securities issued by the Government National Mortgage Association ("GNMA") between the parties to a repo. Under this repo accounting facility, the securities seller ("repo seller") is credited with a "repo out" position, and the securities purchaser ("repo buyer") is credited with a "repo in" position. The parties to a repo are so credited to reflect the right of the repo seller to repurchase the securities and the repo buyer's corresponding obligation to resell the securities. In addition, PTC disburses the equivalent of principal and interest ("P&I") attributable to the underlying securities to the repo seller, which has the repo out position, to reflect the usual terms of repo contracts that the repo seller receives the P&I.

In August 1991, it was recognized that there was a misunderstanding among PTC participants of the procedure to be followed to close out a repo position when the repo buyer is entitled to close out the repo prior to performing its obligation to resell to the repo seller. This could occur, for example, because the repo seller has defaulted under the terms of the repo.

In order to clarify the apparent misunderstanding, PTC distributed a notice to participants advising its participants that PTC would eliminate repo out and repo in positions upon receipt of a representation from the repo buyer stating, in essence, that the repo buyer has the legal right to close out the repo position. This notice and form of representation was filed with the Commission and approved on August 27, 1991 [1] through December 31, 1991, with the understanding that PTC would file a rule change clarifying the specific provisions of its Rules governing repo transactions to eliminate any ambiguity as to the method for closing out a repo position. This is the required filing.

Article III, Rule 1, Section 1(b) of PTC's Rules currently states, in effect, that the repo buyer may request the elimination of its repo in position to reflect the fulfillment of its obligation to resell the securities. This would result in a corresponding elimination of the repo out position of the repo seller, thus closing out the repo entries. Although it was not the intent, this could be interpreted to mean that the repo positions can be eliminated only if the repo buyer resells the securities to the repo seller.

There are situations where the repo out and repo in positions remain open by mistake (*e.g.*, where the repo buyer returns the securities to its repo seller by a regular securities transfer instruction ("STX" message) instead of by the appropriate repo retransfer instruction).[2] In those and comparable circumstances, the PTC repo out and repo in positions can be closed out with the mutual agreement and instructions of the repo parties.

There are, in addition, other situations (*e.g.*, default) as provided for in the usual terms of a repo contract, which effectively terminate the obligation to resell and which should allow the repo buyer to request a close-out of the positions. Thus, the PTC rule is being modified to reflect the clarification contained in PTC's August 20, 1991, notice to participants (*i.e.*, that the repo positions will be closed out upon receipt of a representation from the buyer stating, in effect, that it has the legal right to close out the repo).

The form of representation which was attached to PTC's notice to participants requires that an effective date of a close-out be provided. As long as the effective date specified is prior to a PTC P&I distribution date (PTC expects to continue to require two days notice), the repo seller will not be credited with the P&I equivalent. The PTC P&I distribution date, rather than the record date, is the specified deadline because the repo buyer effectively owns the GNMAs. If the repo buyer owns them at record date, it has the right to the P&I even though PTC's repo accounting system provided a method for the amount of such P&I ("P&I equivalent") to be credited to the repo seller. If the default is before or after record date, the repo buyer, as beneficial owner with the ability to resell, should have the ability to terminate the crediting of the amount of P&I to the repo seller. Although PTC is to receive a representation that the repo buyer has the right to close out the repo, if the repo buyer, in fact, does not have such right, the repo seller will have recourse to legal action outside of PTC to enforce its contract.

In the ordinary course of business, the participant holding the repo out position will be notified of PTC's actions as described.

(b) Since the proposed rule change facilities the prompt and accurate clearance and settlement of securities transactions, it is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to PTC. The proposed rule change will be implemented consistent with the safeguarding of securities and funds in PTC's custody or control of for which it is responsible since the proposed the rule change will be implemented within PTC's existing safeguards.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Prior to filing proposed rule change SR–PTC–91–12, PTC met with market participants and representatives of the Federal Reserve System and discussed the practice as described in the August 20, 1991, Notice to Participants (attached as Exhibit A to that filing) and now reflected in this proposed rule change. Since that time, PTC has discussed its practice with various participants which support this course of action. PTC has not received any unsolicited written comments from participants or other interested parties.

[1] Securities Exchange Act Release No. 29617 (August 27, 1991), 56 FR 43827 [File No. SR–PTC 91–12].

[2] PTC Rules, Article III, § 1, R. 1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such other longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PTC–91–13 and should be submitted by January 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29950 Filed 12–13–91; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18432; 811–6428]

The Asian Fund, Inc.; Notice of Application

December 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The Asian Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on November 21, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Senior Attorney, at (202) 272–2813, or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Delaware. On October 3, 1991, applicant filed a Notification of Registration pursuant to section 8(a) of the Act on Form N–8A. An amendment to applicant's Form N–8A was filed on November 8, 1991. Applicant did not file a registration statement pursuant to section 8(b) of the Act or pursuant to the Securities Act of 1933. Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29947 Filed 12–13–91; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18433; 811–6358]

The Turkey Fund, Inc.; Notice of Application

December 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The Turkey Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has creased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on November 20, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Senior Attorney, at (202) 272–2813, or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On July 15, 1991, applicant filed a Notification of Registration pursuant to section 8(a) of the Act on Form N-8A. Applicant did not file a registration statement pursuant to section 8(b) of the Act or pursuant to the Securities Act of 1933. Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29946 Filed 12-13-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IA-1296; 803-67]

ML Venture Partners II, L.P., et al.; Notice of Application

December 9, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (the "Advisers Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLVP II") and MLVPII Co., L.P. (the "Managing General Partner").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 206A of the Advisers Act from the provisions of section 205(a)(1).

SUMMARY OF APPLICATION: Applicants seek an order granting an exemption from the provisions of section 205(a)(1) of the Advisers Act to permit MLVP II to make in-kind distributions of portfolio securities and, in connection therewith, deem gains or losses on such securities to be realized upon such distributions to partners of MLVP II (the "Partners"). The order would apply only to in-kind distributions of portfolio securities for which market quotations are available and for which a trading market exists on a national securities exchange or an automated quotation system of a registered securities association.

FILING DATE: The application was filed on November 22, 1991. By letter dated December 9, 1991, counsel for applicants stated that an amendment to the application would be filed during the notice period, the substance of which is reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1991 and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP II is a registered business development company organized as a Delaware limited partnership. MLVP II's investment objective is to seek long-term capital appreciation by making venture capital investments.

2. A registration statement under the Securities Act of 1933 on Form N-2 for MLVP II's securities became effective on February 10, 1987. MLVP II closed its public offering on March 31, 1987 and June 10, 1987, at which time it had sold 116,893 and 3,107 units of limited partnership interest, respectively, for total proceeds of $120 million.

3. MLVP II has five general partners, consisting of four individuals (the "Individual General Partners") and the Managing General Partner. The Individual General Partners include the three MLVP II Independent General Partners (who are not "interested persons" of MLVP II within the meaning of section 2(a)(19) of the Investment Company Act of 1940) and one general partner who is an affiliated person of the Managing General Partner. The Managing General Partner is a limited partnership controlled by its general partner, Merrill Lynch Venture Capital Inc. (the "Management Company"), which performs, or arranges for the performance of, management and administrative services necessary for the operation of MLVP II. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc.

4. Prior to May 23, 1991, the Managing General Partner was solely responsible for MLVP II's venture capital investments. On May 23, 1991, MLVP II, the Managing General Partner, and the Management Company retained DLJ Capital Management Corporation (the "Sub-Manager"), an indirect, wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to provide management services in connection with MLVP II's venture capital investments pursuant to a Sub-Management Agreement (the "Sub-Management Agreement"). The Sub-Manager is a wholly-owned subsidiary of DLJ Capital Corporation. Under the Sub-Management Agreement, the Sub-Manager, subject to the overall supervision of the Managing General Partner, the Management Company, and the Individual General Partners, is authorized to "make all decisions" concerning MLVP II's venture capital investments.[1] The Managing General Partner, the Management Company, and the Sub-Manager are each registered under the Advisers Act.

5. Allocations of profits and losses of MLVP II to its Partners are made in accordance with the terms of the Amended and Restated Agreement of Limited Partnership of MLVP II (the "Partnership Agreement"). Under the Partnership Agreement, with respect to each year during which the aggregate of MLVP II's investment income from venture capital investments and net realized gains and losses from venture capital investments is positive, calculated on a cumulative basis over the life of MLVP II through such year, the Managing General Partner will be allocated income and capital gains or losses for such year so that, together with any prior allocations, it has received 20% of such income and gains

[1] Under the Sub-Management Agreement, the Sub-Manager receives 95 percent of the compensation payable by MLVP II to the Management Company under the Management Agreement. In addition, the Management Company has allocated to the Sub-Manager and an affiliate the profits allocable to it pursuant to the "Managing General Partner's Allocation," as defined in the application.

or losses calculated on a cumulative basis over the life of MLVP II through such year (the "Managing General Partner's Allocation"). According to the application, the Partnership Agreement provides that MLVP II's investment income and net realized capital gains or losses in excess of the Managing General Partner's Allocation shall be allocated among all the Partners (including the Managing General Partner) in proportion to their capital contributions. The Partnership Agreement also provides that all other profits and losses, including interest or other income on funds not invested in venture capital investments, shall be allocated among all the Partners (including the Managing General Partner) in proportion to their capital contributions.

6. The Partnership Agreement provides that the Individual General Partners may approve in-kind distributions of any or all of MLVP II's portfolio securities "in such amounts and at such times as they may determine." For the purpose of in-kind distributions, the Partnership Agreement provides that unrealized gains or losses attributable to any securities distributed in-kind to Partners will be deemed realized upon such distribution. The Partnership Agreement also provides that all unrealized gains and losses at the termination of MLVP II will be deemed realized at that time.

7. According to the Partnership Agreement, cash distributions are made to Partners in accordance with the allocation procedures described above. The Partnership Agreement provides that not less frequently than annually, all cash that is not expected to be used in the operation of MLVP II and that is available after the payment of all expenses then due, and that is available after the creation of a reasonable reserve for expenses and follow-on investments, shall be distributed to the Partners in the same proportion as set forth above; provided, however, that (i) cash or other assets otherwise distributable to the Managing General Partner pursuant to the Partnership Agreement may not be distributed to the Managing General Partner (but will remain credited to its Capital Account (as defined in the Partnership Agreement)) to the extent that the net realized gains allocated to the Managing General Partner are offset by an amount equal to 20% of the net unrealized losses of MLVP II; and (ii) cash or other assets otherwise distributable to the Managing General Partner attributable to investment income allocated to the Managing General Partner may not be distributed to the Managing General Partner (but will remain credited to its Capital Account) until MLVP II has sold or otherwise disposed of the security from which the investment income was derived, or until such security is otherwise not carried as an asset of MLVP II and any realized gain or loss from such security has been allocated to the Partners' portfolio securities.

8. Although the Partnership Agreement expressly contemplates in-kind distributions both during the life of MLVP II and upon its termination, and permits the Managing General Partner to receive compensation based upon gains attributable to securities distributed in-kind, MLVP II has made no such distributions. Furthermore, in a prior application filed by the Managing General Partner, the Management Company, and MLVP II,[2] applicants agreed to obtain an exemption pursuant to section 206A of the Advisers Act permitting MLVP II to deem gains or losses to be realized upon in-kind distributions of securities before such distributions are made, or obtain a favorable response to a no-action request indicating that an exemption was not necessary.

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act prohibits any investment adviser registered under the Advisers Act from entering into a contract which provides for compensation based upon "a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client," commonly referred to as a "performance fee."

2. Paragraph (b)(3) of section 205 provides, in pertinent part, that the "performance fee" proscriptions of section 205(a)(1) are not applicable to advisory contracts between an investment adviser and a business development company (a "BDC") if, among other things, "the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the (BDC) over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation." Thus, applicants assert that section 205(b)(3) recognizes the appropriateness of a performance fee as compensation for investment advisers to BDCs in light of their special nature.

3. Section 205(b)(3) permits a performance fee with respect to realized gains only and does not contemplate the procedures set forth in the Partnership Agreement whereby unrealized gains or losses are "deemed" realized under certain conditions for purposes of the compensation formula.

4. Section 206A of the Advisers Act provides that the Commission may exempt any person or transaction from any provision of the Advisers Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the Advisers Act)."

5. Applicants request an exemptive order pursuant to section 206A of the Advisers Act because the proposed performance fee based upon an in-kind distribution of portfolio securities to the Managing General Partner, the Management Company, or the Sub-Manager might be deemed compensation to an "investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds of the client" in contravention of section 205(a)(1) of the Advisers Act, and which may not be permitted under section 205(b)(3).

6. Applicants state that the exemption sought is consistent with the protection of investors and with the purposes of the Advisers Act. Congress has found it appropriate to permit a performance fee in the case of an investment adviser to a BDC. Applicants argue that to the extent section 205(b)(3) requires a performance fee to be based on realized capital gains, the proposal is consistent with the statutory purpose. Once the in-kind distribution is made, the Managing General Partner will no longer have any control over the investment in the subject securities; investors in MLVP II will have the exclusive ability to liquidate such investments. Furthermore, under the terms of applicants' proposal, the proper valuation of the securities upon which the performance fee is based would be easily determinable. Applicants request exemptive relief only with respect to in-kind distributions of securities for which a trading market exists on a national securities exchange or on an automated quotation system of a registered securities association, such as the NASDAQ National Market System. Thus, applicants assert that the issues that would be raised if MLVP II paid a performance fee based on the valuation of securities of private companies are absent.

7. Applicants submit that it is in the best interests of the Partners, and particularly the Limited Partners, for MLVP II to have the authority to make in-kind distributions of its portfolio

[2] ML Venture Partners II, L.P., Investment Company Act Release Nos. 15603 (Mar. 5, 1987) (notice) and 15652 (Mar. 30, 1987) (order).

securities. First, the distributed securities would be freely transferable, which will enable the Partners to determine whether to hold or sell the distributed securities. As a venture capital fund, MLVP II has no experience or expertise with respect to publicly-traded securities. Therefore, the Partners do not lose the benefits of expert, professional management by receiving in-kind distributions. Second, the distributions of portfolio securities will not constitute a taxable event, so that Partners will, in determining whether to hold or sell the securities, control the timing of realization of capital gains. Third, to the extent that MLVP II holds a significant percentage of a given company's shares, applicants expect that the market could more easily absorb sales by those Partners desiring to sell over a more extended time period than if MLVP II sold its position directly. Similarly, in-kind distributions on termination are an efficient way of winding up MLVP II's affairs and avoiding premature dispositions of portfolio investments.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29884 Filed 12-13-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1534]

The Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Advisory Committee on International Communications and Information Policy will hold an open meeting on January 9, 1992, from 9:30 a.m. to 1 p.m. in room 1107, Department of State, 2201 C Street, NW., Washington DC.

The Advisory Committee deals with issues of international communications and information policy, especially as the issues involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, and the activities of international organizations with regard to the development of communications and information policy.

This meeting will deal with four issues:

1. Consideration of a draft report entitled "Study of International Financing of Telecommunications" prepared by an Advisory Committee Task Force;

2. Briefing by Ambassador Jan Baran on U.S. Goals and Objectives for the 1992 World Administrative Radio Conference (WARC) of the International Telecommunication Union (ITU);

3. A status report on the visit to the USSR of the Advisory Committee's Blue Ribbon Panel;

4. Discussion of the Program of Work for the Coming Year.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Arrangements must be made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Mr. Bohdan Bulawaka, Department of State, Washington, DC; telephone 202-647-5791. All attendees must use the C Street entrance to the building.

Dated: December 4, 1991.

Bohdan Bulawka,

Executive Secretary, Advisory Committee on International Communications & Information Policy.

[FR Doc. 91-29878 Ffiled 12-13-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1533]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on January 16, March 19, April 16, May 21, June 18, and July 16, 1992. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for July 1992 at the IMO headquarters in London, England.

Agenda items include preparation for the 38th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTM), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Dated: November 26, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-29880 Filed 12-13-91; 8:45 am]

BILLING CODE 4710-70-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 159; Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment Using Global Positioning System (GPS); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the nineteenth meeting of Special Committee 159 to be held January 8-10, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the eighteenth meeting held July 22-23, 1991, RTCA paper no. 524-91/SC159-318 (previously distributed); (3) Review working group progress and identify issues for resolution; (a) GPS/GLONASS; (b) GPS/GIC; (c) GPS/Other Navigation Systems; (d) GPS/Precision Approach and Runway Incursion Detection; (e) Fault Detection and Isolation; (4) Discuss draft MOPS format; (5) Review of comments received from EUROCAE and other organizations; (6) Assignment of tasks; (7) Working groups meet in separate sessions; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 9, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 91-29914 Filed 12-13-91; 8 45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Notice

December 11, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: December 18, 1991, 10 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 949th Meeting—December 18, 1991, Regular Meeting (10 a.m.)

CAH-1.
Project No. 6188-016, Sierra Hydro, Inc.
CAH-2.
Project No. 5998-003, City of Emporia, Virginia
CAH-3.
Project No. 5295-006, City and County of San Francisco
CAH-4.
Project No. 1953-006, Consolidated Water Power Company
CAH-5.
Docket No. 10725-001, Little Horn Energy Wyoming, Inc.
CAH-6.
Project No. 1957-004, Wisconsin Public Service Corporation
CAH-7.
Project No. 2832-016, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District and Big Bend Irrigation District
CAH-8.
Omitted
CAH-9.
Docket No. UL90-6-002, Habersham Mills
CAH-10.
Project No. 2994-013, Borough of Lehighton
CAH-11.
Omitted
CAH-12.
Project No. 10047-000, Northern Hydro Consultants, Inc.
Project No. 10514-000, C&A Wallcoverings, Inc.
CAH-13.
Project No. 8263-004, Summit Hydropower

Consent Agenda—Electric

CAE-1.
Docket No. EC92-4-0000, Holyoke Power and Electric Company
CAE-2.
Docket Nos. ER91-478-001 and EL91-42-001, Philadelphia Electric Company
CAE-3.
Docket Nos. ER91-171-001, ER91-204-001 and ER91-205-001, Georgia Power Company
Docket No. ER91-150-005, *et al.*, Southern Company Services, Inc.
CAE-4.
Docket No. EL90-48-002, City of New Orleans, Louisiana v. Entergy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power and Light Company, Mississippi Power and Light Company and System Energy Resources, Inc.
CAE-5.
Docket No. EL89-53-003, Blue Ridge Power Agency, Central Virginia Electric Cooperative, Inc. v. Appalachian Power Company
Docket Nos. ER90-132-002 and ER90-133-002, Appalachian Power Company
CAE-6.
Docket No. ER90-159-002, South Carolina Electric & Gas Company
CAE-7.
Docket Nos. EF91-2011-002, EF91-2021-002, EF91-2041-002 and EF91-2071-002, United States Department of Energy—Bonneville Power Administration
CAE-8.
Docket No. EL91-48-000, American Municipal Power-Ohio, Inc. and the City of Cuyahoga Falls, Ohio v. Ohio Edison Company
CAE-9.
Docket No. EL92-1-000, North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Company
CAE-10.
Docket No. EL91-55-000, Duke Power Company v. Carolina Power & Light Company
CAE-11.
Docket No. ER91-195-003, Western Systems Power Pool
CAE-12.
Docket Nos. ER85-689-000 and 009, Holyoke Water Power Company and Holyoke Power and Electric Company
Docket No. ER85-720-014, *et al.*, Connecticut Light and Power Company, *et al.*
Docket Nos. EC90-10-000, ER90-143-000, ER90-144-000, ER90-145-000 and EL90-9-000 Northeast Utilities Service Company
Project Nos. 10675-000, 10676-000, 10677-000, 10678-000, and ER85-707-000, Western Massachusetts Electric Company
Project Nos. 10731-000, 10732-000, 10733-000, 10734-000 and EL91-16-000, South Hadley Electric Light Department
CAE-13.
Docket No. EL90-46-000, The Cincinnati Gas & Electric Company v. Buckeye Power, Inc.

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP92-51-000, Tennessee Gas Pipeline Company
CAG-2.
Docket No. RP92-49-000, Transwestern Pipeline Company
CAG-3.
Docket No. RP92-46-000, Algonquin Gas Transmission Company
CAG-4.
Docket No. RP92-44-000, Colorado Interstate Gas Company
CAG-5.
Docket No. RP92-41-000, Florida Gas Transmission Company
CAG-6.
Docket Nos. RP92-29-000 and TA92-2-82-001, Viking Gas Transmission Company
CAG-7.
Docket No. TM92-4-37-000, Northwest Pipeline Corporation
CAG-8.
Docket No. TM92-2-33-000, El Paso Natural Gas Company
CAG-9.
Docket No. TM92-3-22-000, CNG Transmission Corporation
CAG-10.
Docket No. TQ92-4-59-000, Northern Natural Gas Company
CAG-11.
Docket No. TQ92-3-8-000, South Georgia Natural Gas Company
CAG-12.
Docket No. TQ92-5-4-000, Granite State Gas Transmission, Inc.
CAG-13.
Docket Nos. TQ92-1-2-000, TA92-1-2-000 and 001, East Tennessee Natural Gas Company
CAG-14.
Docket No. TA92-1-1-000, Alabama-Tennessee Natural Gas Company

CAG–15.
Docket Nos. TA92–1–16–000, 001, TQ92–2–16–000 and TM92–3–16–000, National Fuel Gas Supply Corporation
CAG–16.
Docket Nos. TA92–1–59–000, 001 and TM92–2–59–000, Northern Natural Gas Company
CAG–17.
Docket Nos. TA92–1–9–000 and TM92–2–9–000, Tennessee Gas Pipeline Company
CAG–18.
Docket No. RP89–141–006, Sea Robin Pipeline Company
CAG–19.
Docket Nos. TA89–1–31–000, 001, 004 and RP89–62–000, Arkla Energy Resources
CAG 20.
Docket Nos. TA91–1–43–000, 001, TM91–5–43–000 and 001, Williams Natural Gas Company
CAG 21.
Docket Nos. GT90–46–000, 001 and 002, Tennessee Gas Pipeline Company
CAG 22.
Docket Nos. GT91–5–000, 001 and 002, Northwest Pipeline Corporation
CAG 23.
Docket No. RP92–47–000, U–T Offshore System
CAG 24.
Docket No. RP92–50–000, High Island Offshore System
CAG 25.
Docket Nos. RP91–143–006, 007, RP91–231–001 and 002, Great Lakes Gas Transmission Limited Partnership
CAG 26.
Docket No. RP92–14–001–, Transwestern Pipeline Company
CAG 27.
Docket No. RP92–33–000, National Fuel Gas Supply Corporation
CAG 28.
Docket No. RP91–205–001, Texas Eastern Transmission Corporation
CAG 29.
Docket Nos. RP86–169–021, RP86–105–000 and RP87–25–000, ANR Pipeline Company
CAG 30.
Docket No. CP89–1281–017, Natural Gas Pipeline Company of America
CAG 31.
Docket No. RP91–188–003–, El Paso Natural Gas Company
CAG 32.
Docket No. RP90–111–013, East Tennessee Natural Gas Company
CAG 33.
Docket No. RP86–10–014, Williston Basin Interstate Pipeline Company
CAG 34.
Docket No. TQ92–1–63–002, Carnegie Natural Gas Company
CAG 35.
Docket Nos. RP91–170–002, RP87–71–007 and RP88–182–007, Gas Research Institute
CAG 36.
Docket No. RP91–183–001, Midwestern Gas Transmission Company
CAG 37.
Docket Nos. RP91–41–001, 002, RP91–90–000 and 001, Columbia Gas Transmission Corporation
CAG 38.
Omitted
CAG 39.
Docket No. RP91–92–004, Colorado Interstate Gas Company
CAG 40.
Docket Nos. RP88–92–027, RP88–263–020 and RP88–265–012, United Gas Pipeline Company
CAG 41.
Docket Nos. RP91–126–005–, 007, CP91–1669, 002–003, CP91–1670–002, 003, CP91–1671–002, 003, CP91–1672–002, 003, CP91–1673–002 and 003, United Gas Pipe Line Company
CAG 42.
Docket Nos. RP91–203–001, 002 and 003, Tennessee Gas Pipeline Company
CAG 43.
Docket No. RP87–15–029, Trunkline Gas Company
CAG 44.
Docket Nos. RP91–166–003–, 004 and 005, Northwest Pipeline Corporation
CAG 45.
Docket Nos. RP91–119–003 and 005, Texas Eastern Transmission Corporation
CAG 46.
Docket Nos. RP91–204–001 and RP90–111–012, East Tennessee Gas Company
CAG 47.
Docket Nos. RP91–187–004 and CP91–2448–002, Florida Gas Transmission Company
CAG 48.
Docket Nos. RP82–58–027–, RP82–105–010 and RP88–262–008, Panhandle Eastern Pipe Line Company
CAG 49.
Docket No. RP89–141–005, Sea Robin Pipeline Company
CAG 50.
Docket Nos. RP91–215–002, RP91–217–001 and RP91–104–003, Transwestern Pipeline Company
CAG 51.
Omitted
CAG 52.
Docket Nos. TM92–3–21–001 and RP91–41–010, Columbia Gas Transmission Corporation
CAG 53.
Docket Nos. TM92–2–16–001 and RP91–47–000, *et al.*, National Fuel Gas Supply Corporation
CAG 54.
Docket Nos. TQ89–1–46–033, RP86–165–013, RP86–166–017 and CP90–1984–000, Kentucky West Virginia Gas Company
Docket No. CP90–1985–000, Columbia Gas Transmission Corporation
CAG 55.
Docket No. RP91–141–004, Williston Basin Interstate Pipeline Company
CAG 56.
Docket No. RP84–82–004, Tarpon Transmission Company
CAG–57.
Docket No. RP85–170–000, Texas Eastern Transmission Corporation
CAG–58.
Docket No. PR91–17–000, TEX/CON Gas Pipeline Company
CAG–59.
Docket No. PR91–21–000, Mississippi Valley Gas Company
CAG–60.
Docket Nos. IS85–9–000, OR85–1–000 and OR90–1–000, Kuparuk Transportation Company
CAG–61.
Docket No. RP91–213–000, Williston Basin Interstate Pipeline Company v. K N Energy, Inc.
CAG–62.
Docket No. CI91–8–000, Meridian Oil, Inc., Meridian Oil Production, Inc., and Southland Royalty Company
Docket No. CI91–43–000, Ruth Ray Hunt, d/b/a, Mrs. H.L. Hunt, *et al.*
Docket No. CI91–50–000, El Paso Production Company
Docket No. CI91–76–000, Hunt Petroleum Corporation
Docket No. CI91–119–000, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
CAG–63.
Docket Nos. CS86–97–001 and 002, Harbert Energy Corporation
CAG–64.
Docket No. GP92–1–000, Oklahoma Corporation Commission, Tight Formation Determination for Cherokee Group (Oklahoma–10), FERC No. JD91–10110T
CAG–65.
Docket No. CI90–58–001, New England Power Company and the Narragansett Electric Company
Docket No. CI91–33–001, JMC Fuel Services, Inc.
Docket No. CI91–35–001, Connecticut Natural Gas Corporation
Docket No. CI91–52–001, Providence Gas Company and Prov Energy Investments, Ltd.
Docket No. CI91–28–001, Northern Minnesota Utilities
Docket No. CI91–75–001, Peoples Natural Gas Company, Division of UtiliCorp United, Inc.
Docket No. CI91–78–001, Gulf States Pipeline Corporation
Docket No. CI91–79–001, Transok, Inc.
Docket No. CI91–85–001, Commonwealth Gas Company
Docket No. CI91–94–001, New York State Electric & Gas Company
Docket No. CI91–97–001, Niagara Mohawk Power Corporation
Docket No. CI91–104–001, New Jersey Natural Gas Company
Docket No. CI92–1–001, Washington Natural Gas Company
Docket No. CI89–461–001, Quantum Chemical Corporation
Docket No. CI91–88–001, Doswell Limited Partnership
Docket No. CI91–93–000, Lockport Energy Associates
Docket No. CI91–101–001, North Jersey Energy Associates
Docket No. CI91–102–001, Northeast Energy Associates
Docket No. CI91–103–001, Ocean State Power II
Docket No. CI91–106–001, Honda of America, Mfg., Inc.
Docket No. CI91–126–001, Manville Corporation, *et al.*

Docket No. CI91-128-001, Cogen Energy Technology, L.P.
CAG-66.
Docket No. CP91-1117-001, Tom Brown, Inc.
CAG-67.
Docket No. CP91-2021-001, Questar Pipeline Company
CAG-68.
Docket Nos. CP89-460-009 and CP90-1-003, Pacific Gas Transmission Company
CAG-69.
Docket Nos. CP91-2126-001, CP91-2127-001, CP91-2128-001, CP91-2129-001, CP91-2615-001, CP91-2621-001, CP91-3026-001 and CP91-3027-001, Western Gas Interstate Company
CAG-70.
Docket No. CP89-634-012, Iroquois Gas Transmission System, L.P.
Docket No. CP89-629-011, Tennessee Gas Pipeline Company
CAG-71.
Docket Nos. CP91-2677-001 and CP89-634-011, Iroquois Gas Transmission System, L.P.
Docket Nos. CP89-629-007 and CP90-639-003, Tennessee Gas Pipeline Company
Docket No. CP89-661-009, Algonquin Gas Transmission Company
CAG-72.
Docket Nos. CP91-650-001, CP91-659-001, CP87-115-001, CP91-559-001, CP91-560-001, CP91-983-001, CP90-1526-001 and CP91-1082-001, Tennessee Gas Pipeline Company
CAG-73.
Docket No. CP90-2314-001, Tennessee Gas Pipeline Company
CAG-74.
Docket No. CP89-2095-001, Trunkline Gas Company
CAG-75.
Docket Nos. CP91-1186-001, CP91-2458-002, and RP91-143-000, *et al.*, Great Lakes Gas Transmission Limited Partnership
CAG-76.
Omitted.
CAG-77.
Docket No. CP89-324-001, Panhandle Eastern Pipe Line Company
CAG-78.
Docket No. CP91-3205-000, Tennessee Gas Pipeline Company
CAG-79.
Docket No. CP89-1232-001, Southern Natural Gas Company
CAG-80.
Docket Nos. CP91-350-000 and 001, Tennessee Gas Pipeline Company
CAG-81.
Docket No. CP91-1964-000 Tennessee Gas Pipeline Company
CAG-82.
Docket No. CP91-1618-000, Tennessee Gas Pipeline Company
CAG-83.
Docket No. CP91-308-000, United Gas Pipe Line Company
CAG-84.
Docket No. CP91-1616-000, ANR Pipeline Company
Docket No. CP91-1634-000, Great Lakes Gas Transmission Ltd. Partnership
CAG-85.
Docket No. CP87-536-001, High Plains Natural Gas Company
CAG-86.
Docket No. CP91-2307-000, South Penn Gas Company
CAG-87.
Docket Nos. CP91-2322-000 and 002, Paiute Pipeline Company
CAG-88.
Docket Nos. CP91-780-000, 001 and 002, Northwest Pipeline Corporation
CAG-89.
Docket No. CP91-1925-000, Southwestern Glass Company, Inc. v. Arkla Energy Resources, a division of Arkla, Inc.
CAG-90.
Docket No. CP91-50-002, Sumas Energy, Inc.
CAG-91.
Docket No. CP86-317-000, Panhandle Eastern Pipe Line Company
CAG-92.
Docket No. CP85-625-003, Northwest Pipeline Corporation
CAG-93.
Docket Nos. RP91-143-005 and RP91-231-003, Great Lakes Gas Transmission Limited Partnership
CAG-94.
Docket No. CR91-143-005, Great Lakes Gas Transmission Limited Partnership

Hydro Agenda

H-1.
Docket No. RM91-5-000, Preferences at Relicensing of Units of Development.

Electric Agenda

E-1.
Docket No. EC88-2-007, Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation. Order on remand.
E-2.
Docket No. RM91-17-000, Generic Determination of Rate of Return on Common Equity for Public Utilities. Final Rule.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket No. RM87-5-000, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order No. 497-C.
PR-2.
Docket Nos. RP86-119-000, RP88-191-000, R89-30-000, RP90-122-000, RP91-29-000, RP91-167-000, RP88-228-000, RP89-249-000, RP89-29-000, RP89-149-000, RP89-242-000, CP87-115-000, CP89-470-000, TA84-2-9-000, TA85-1-9-000, TA89-1-9-000, TA90-1-9-000, TA91-1-9-000, RP91-16-000, CP87-103-000 and CP91-3135-000, Tennessee Gas Pipeline Company. Order on settlement.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket No. CP90-1391-001, Arcadian Corporation v. Southern Natural gas Company.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30120 Filed 12-12-91; 3:58 pm]

BILLING CODE 6717-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:30 p.m., Friday, December 20, 1991.

PLACE: Hearing Room, Suite 850, 1424 K. Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the months of October and November, 1991;
(2) Mediator Training Program for Laptop Computers;
(3) NMB Employee Assistance Program;
(4) Projected Time Table for NMB Office Move;
(5) NMB Sexual Harassment Policy Statement;
(6) NMB EEO Training Program; and
(7) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: December 11, 1991.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 91-30027 Filed 12-11-91; 4:55 pm]

BILLING CODE 7550-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:03 p.m. on Tuesday, December 10, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) Sale of assets; (2) the early termination or renegotiation of FSLIC Assistance Agreements; and (3) contracting matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), and seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Chairman William Taylor, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters

in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC.

Dated: December 11, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–30020 Filed 12–11–91: 4:34 pm]

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federal register

Monday
December 16, 1991

Part II

Department of Housing and Urban Development

24 CFR Part 92
Home Investment Partnerships Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-91-1518; FR-2937-I-02]

RIN 2501-AB12

Home Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This part provides the implementing regulations for the HOME Investment Partnerships Program (HOME Program). In general, under the HOME Program, HUD allocates funds by formula among eligible states and local governments to provide more affordable housing. HOME funds must be matched by non-federal resources. State and local governments that become participating jurisdictions may use HOME funds to provide affordable rental and homeownership housing through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

HUD may reallocate funds competitively to jurisdictions and to community housing development organizations to provide affordable housing.

The HOME Program also provides funds to Indian tribes, on a competitive basis, to provide affordable rental and homeownership housing through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance.

DATES: *Effective date:* This rule is effective on January 16, 1992 except for §§ 92.51, 92.152, 92.631, and 92.632, which will not be effective until approval of the information collection requirements in those sections and issuance of an approval number by the Office of Management and Budget (OMB). HUD will publish a separate document announcing the effective date of those sections and the OMB approval number.

Comment due date: May 1, 1992. The Department is providing an extended comment period in order to obtain public comment based on programmatic experience in the initial implementation of the HOME Program.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: With respect to Indian tribes, Dominic Nessi, Director, Office of Indian Housing, Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1015, TDD (202) 708-0850. With respect to other aspects of the HOME Program, Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing, 451 Seventh Street, SW., Washington, DC20410, telephone (202) 708-2470,TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this rule, for the most part, have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been approved under OMB control number 2501-0013. The Department has revised or added information collection requirements in §§ 92.51, 92.152, 92.631, and 92.632, and has submitted a request for OMB approval of these requirements.

The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart below. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, room 3001, Office of Management and Budget, Washington, DC 20503, Attention: Jennifer Main, Desk Officer for HUD. The Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

ANNUAL REPORTING AND RECORDKEEPING BURDEN

[Revision of previously approved burden]

Reg section and paperwork requirement	Record-keeping hours	Reporting hours	No. of juris.	Total hours
92.51—Production of Set-Aside Appeal		5	50	250.0
92.101—Consortia Designation		5	30	150.0
92.103—Notice of Intent		.5	330	165.0
92.104—Submission of Strategy (Information on this information collection requirement was included in the interim rule regarding Comprehensive Housing Affordability Strategies published on February 4, 1991, at 56 FR 4480.)				
92.150—Program Description, including certifications		10	330	3,330.0
92.200—Private-Public Partnership	2.0		430	860.0
92.201—Distribution of Assistance	2.0		430	860.0
92.202—Site and Neighborhood	2.0		150	300.0
92.203,92.610—Income Determination	2.0		810	1,620.0
92.206,612, 92.216, 92.217, 92.218, 92.250, 92.620, 92.252, 92.614, 92.254, 92.615, 92.255, 92.256—Documentation required by HUD to be included in project file to determine project eligibility (i.e. eligible uses, eligible costs, income eligibility, costs limits, mixed-projects and value and type of matching contribution)	5.0		810	4,050.0
92.209, 92.210—New Construction Determination	4.0		50	200.0
92.222—Reduction of Match Requirement		5	330	1,650.0
92.251, 92.621—Written Property Standards	1.0		810	810.0
92.253, 92.622—Tenant Protections (including lease requirements)	5.0		810	4,050.0
92.300—CHDO Identification	2.0		330	660.0
92.301—CHDO Project Assistance	2.0		330	660.0

ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

[Revision of previously approved burden]

Reg section and paperwork requirement	Record-keeping hours	Reporting hours	No. of juris.	Total hours
92.303—Tenant Participation Plan	10.0		50	500.0
92.350—Equal Opportunity (including nondiscrimination, and minority and women business enterprise and minority outreach efforts)	5.0		790	3,950.0
92.351—Affirmative Marketing	10.0		790	7,900.0
92.352, 92.634—Displacement, relocation and acquisition (including tenant assistance policy and C/MI System documentation	5.0		810	4,050.0
92.354,92.635—Labor	2.5		810	2,025.0
92.355, 92.636—Lead-based paint	.5		810	405.0
92.357, 92.638—Debarment and Suspension	1.0		810	810.0
92.453—Application for Direct Reallocations		3	100	300.0
92.501, 92.641—Investment Partnership Agreement	.5	.5	810	810.0
92.502, 92.642—Cash management System	10.0		810	8,100.0
The documents listed below will be submitted by program participants report data required by the Cash Management System.				
Homeownership Assistance/Rental Housing Project Set-Up Report		12.5	810	10,125.0
Tenant Based Rental Assistance Project Set-Up Report		6.25	810	5,602.5
Rental Housing Project Completion Report		7.5	810	6,075.0
Homeownership Assistance Project Completion Report		3.75	810	3,037.5
Payment Certification		2.0	810	1,620.0
Designation of Community Housing Development Organizations		1.5	290	435.0
State Designation of Local Recipients		1.5	40	60.0
92.504, 92.644—Participating Jurisdiction's (Indian tribe's) Written Agreements	10.0		810	8,100.0
92.507, 92.647—Closeout Report	Not applicable—Home Allocations Will Not Be Closed-Out for Four to Five Years After Award			
92.509, 92.649—Annual Performance Report		5	450	2,250.0
92.605—Application for Indian Program Set-Aside		5	20	100.0
The following requirements are not provisions contained in Subpart M of the Regulations which are applicable to the HOME Indian Program.				
92.631(b)(2)(i)—Preference by Tribes		1	20	20.0
92.631(b)(1), (2), (3), and (6)—Eligibility for Indian Preference		6	30	180.0
92.631(f)(1)—Review Procedures for Indian Preference Complaints		2	10	20.0
92.631(f)(4)—Indian Tribe Response to Indian Preference Complaint		1	10	10.0
92.632(a)(2)(ii)—Methods of Procurement	1.0		20	20.0
92.632(a)(2)(iii)—Contractor/Developer Statement Describing Indian Preference		2	20	40.0
92.632.(a)(2)(iv)—Contractor Certification on Infeasibility of Indian Preference		1	20	20.0
92.632(b)(iii)—Small Purchase Procedures		2	20	40.0

Total Recipient Burden Hours.
Total Participant Costs:
Recordkeeping Hours: 50,335×$15=755,025.
Reporting Hours: 35,345×$15=$530,175.
Total—85,680×$15=$1,285,200.

Summary of Home Participants

Following is a breakout of jurisdictions/entities performing specific recordkeeping and reporting requirements as described in the paperwork matrix:

1. No of Participants—810

(Allocations of $750,000, excludes 52 state programs)	198
(Allocations of $500,000)	50
(Consortia)	30
(Jurisdictions/non profits with direct reallocations)	100
(State recipients in 40 State decentralized programs)	400
(Centralized states programs)	12
(Indian Tribes)	20
Total	810

2. No. of Participants—330

(Allocations of $750,000, includes 52 State Participants)	250
(Allocations of $500,000)	50
(Consortia)	30
Total	330

3. No of Participants —430

(Allocations of $750,000, includes 52 State Participants)	250
(Allocations of $500,000)	50
(Consortia)	30
(Jurisdiction/non profits with direct reallocations)	100
Total	430

4. No of Participants—790
(Same as 1/ above, less 20 Indian Tribes)

5. No of Participants—450
(Same as 3/ above, plus 20 Indian Tribes)

II. Background

On March 19, 1991, the Department published a proposed rule (56 FR 11592) to implement the HOME Program, which had been enacted under title II of the Cranston-Gonzalez National Affordable Housing Act (Title II, Pub. L. 101–625, approved November 28, 1990, 104 Stat. 4094–4128, 42 U.S.C 12701–12839) (NAHA). In an attempt to meet the statutory deadline of May 28, 1991 for publishing an effective rule after notice and comment, the Department limited the public comment period to 30 days after publication. The Department has received 119 public comments in response to the proposed rule. Commenters included 27 units of general local government (UGLG), 27 state or local community development agencies (CDA), 9 housing finance agencies (HFA), 16 public interest groups (PIG), 21 nonprofits (NP), 5 public housing agencies (PHA), two states, two housing opportunity commissions (HOC), two legal services organizations (LSO), two trade associations (TA), one congress person, one Indian tribe, one housing resource board, and one law firm.

Summary of Comments

HOME Rule Comments

Of the 119 commenters on the HOME Rule, twenty-one provided substantial general comments on the regulation. The Department was credited for its timely issuance of the proposed rule and its decision to first publish the rule, for effect, as an interim rule. Several commenters suggested extending the

review period because of the length and complexity of the rule.

The Department was criticized for its inflexibility in its interpretation of the matching contribution requirements, in limiting the definition to contributions to the program and not including debt financing, public financing, owner and sweat equity. There was some positive sentiment that the Department had provided some measure of flexibility on the matching contribution requirements with regard to the administrative cost credit, no matching contribution required on reallocations, and end of the year (not project-by-project) accounting for the matching contributions.

The Department was also criticized for suggesting that HOME funds be used to maximize the assistance to many people rather than deeply subsidizing some, with commenters citing an intrusion into local discretion and second guessing local needs which may be documented in the Comprehensive Housing Affordability Strategy (CHAS). Sentiment was expressed that the terms of affordability be minimums, and that HOME-assisted units should be made affordable for longer periods of time at local choice—or in perpetuity. One commenter suggested that the emphasis should be on rehabilitation, while another one wanted a true block grant without any restrictions on new construction.

The Department was appreciative of the number and depth of comments received on the proposed rule and has responded to the comments under the appropriate sections, attempting, within statutory constraints, to provide additional flexibility for state and local administration. With regard to extending the comment period, the Department believes that, based on the extensive comments received, sufficient time was provided. In addition, this rule is being published as an interim rule and, therefore, another comment period will be afforded before the Department issues a final rule.

Subpart A—General

Section 92.2 Definitions

There were 70 public commenters on the definitions, 38 of whom specifically addressed nonprofits and community housing development organizations while 32 commenters addressed a variety of other issues.

There were six public comments on Single Room Occupancy housing (SROs), suggesting that the definition be amended to allow both kitchen facilities and baths as well as allowing two people to occupy the unit. The Department is accommodating both those recommendations in the revised definition.

There were two commenters who wanted low-income and very low-income to be lower than 80 and 50 percents respectively. The definitions are statutory.

There were also many comments requesting HUD to change the definition of substantial rehabilitation—apparently without realizing that the definition was statutorily based.

There were several commenters who wished HUD would change the definition of project to include scattered site locations. The Department has provided additional flexibility by allowing two or more buildings in a four-block area to be considered a project, if all are under common ownership and there is management, under a commitment by the owner, as a single undertaking under this part. The Department believes it is important to preserve the proximate or neighborhood context of a project. The reference to matching funds was also deleted to remove any ambiguity that matching funds must be used in HOME-assisted projects.

We were asked to include leasehold interest in the definition of homeownership. The Department agrees that in some circumstances homeownership may be something other than fee simple title. The regulation has been amended to recognize 99 year leases and to permit participating jurisdictions to request HUD approval of other forms of ownership.

One commenter indicated that the definition of family was different in the CHAS and HOME rules. The definitions in both regulations are based on the definition in section 104(11) of NAHA. The definition in the CHAS regulation will be revised for consistency with the HOME Program and the statute. (A final regulation for CHAS is scheduled to be developed and issued in February 1992.)

We were also asked to consider whether organized boroughs in the state of Alaska were considered units of local government. They are.

One commenter wanted the definition of project to exclude non-affordable units in a mixed-income project and to clarify that units not funded with HOME funds are completely unregulated. The Department has not adopted this comment. The non-HOME funded units must be included in the definition of project for HOME and for the participating jurisdiction to be able to determine if HOME requirements are satisfied, e.g., non-HOME funded units cannot be more than 50 percent of the units in the project for contributions to those units to be recognized as matching contributions. In addition, non-HOME funded units are subject to the other federal requirements set forth in Subpart H.

Two commenters requested that we include both AIDS and HIV-positive individuals under the definition of persons with disabilities. Persons with AIDS or who are HIV-positive are not automatically considered to be disabled, but must qualify under the provisions of the definition.

The Department received 9 comments regarding the definition of commitment. All commenters indicated that the 90-day period for the start of construction was too short or unreasonable to allow for the leveraging of funds, working with multiple lenders, and the development of architectural plans and specifications. Commenters were particularly troubled if the project involved acquisition, demolition, or both. HOME funds will need to be committed first to obtain additional financing. The Department took into account the comments and extended the period between commitment and start of construction to six months. With the short statutory deadlines to commit funds and the emphasis on producing affordable housing, the Department is concerned that only viable, well-conceived projects are set up in the Cash and Management Information System.

Community Housing Development Organizations (CHDOs)

The Department received 49 comments from 38 commenters regarding the definition of CHDOs. Of the 49 comments received, 36 comments addressed the regulation requirement that a CHDO must maintain at least one-third of its governing board's membership for low-income community residents. Four respondents spoke to the requirement of having a one-year track record before qualifying for HOME funds. Three comments were received suggesting the expansion of the definition of CHDOs; two comments each were received on accountability and demonstrated capacity. One comment each was received on the language needed in corporate by-laws and on the definition of "community."

One-third low-income board membership: With respect to the 36 comments received on the low-income participation on the governing board, 29 disagreed with, and 7 agreed with or supported, the need for such a requirement.

The majority stated that the provision was intrusive and burdensome; would require income certification and recertification of the low-income board

members; was not reflective of the statute; was unduly restrictive, or inflexible; was only appropriate for neighborhood based organizations; should not be a requirement but rather only a consideration; and would eliminate most CHDOs from participating in HOME.

In response, the Department has expanded the regulation so that one-third of the governing board's members must be *either* low-income community residents or elected representatives of low-income neighborhood organizations. If the person is a resident of a low-income neighborhood, the person is considered to be low-income. If the person does not live in a low-income neighborhood, verification that the person is low-income is necessary. In addition, no income verification is required for persons who represent low-income neighborhood organizations. However, representatives must have received their appointments through a formal election process.

Community: Several commenters suggested that the definition of the term "community" was too restrictive in that it did not include neighborhoods and cohesive, low-income constituencies, such as ethnic, racial or special needs populations.

The Department has amended the definition so that "community" may be one or more defined neighborhoods within a city, county or metropolitan area. However, the term does not inc1ude "cohesive constituencies," but rather must be tied to a geographical area.

Accountability: One commenter expressed the view that the proposed language regarding accountability was too weak and should be revised in order to carry out the statutory intent of providing clear preference (over all other types of housing developers) for those nonprofit organizations which were created by and are accountable to low-income communities.

The Department believes that the 15 percent minimum set-aside for CHDOs adequately reflects Congressional intent to give preference to nonprofit housing developers.

Another commenter recommended that CHDOs establish a project committee composed of individuals eligible to reside in the housing developed under HOME. The CHDO would be accountable to this project committee on decisions regarding project design, site selection, marketing, management and other key issues.

The Department believes that this type of resident/beneficiary committee is envisioned in the definition of a CHDO as a means of maintaining accountability to low-income community residents. It may be a project-specific committee or a standing committee of the CHDO; however, it must contain tenants of the building or individuals eligible to reside in the housing expected to receive HOME funds.

One-year track record: Three commenters stated that a one-year track record requirement would preclude a large CHDO from doing development in a local area where it had not worked before.

This issue hinges on the definition of the term "community." The Department believes that as long as a CHDO, large or small, has been serving some part of its "community" (neighborhood, multiple neighborhoods, city-wide or multiple county) for at least one year, it satisfies this criterion.

One commenter stated that only a one-year history of service is much too broad, if the intent is to have an organization with a meaningful track record. Consideration should be given to a record of successful projects and activity in the community.

The Department believes that this concern is satisfied by criterion three, which requires a demonstration of capacity on the part of a qualifying CHDO.

Affordability: One commenter responded that the language "the provision of decent housing that is affordable to low-income and moderate-income persons," which must be in the stated purposes of a nonprofit organization in order to qualify as a CHDO, is too specific and restrictive for broadly written by-laws of nonprofits. The commenter suggested that the language be changed to "Has among its purposes the provision of decent housing, as evidenced in its charter, articles of incorporation, resolution or by-laws."

The statute requires the CHDO to have among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons. The Department has not adopted this suggestion, because the Department believes that the purpose of providing housing that is affordable to low-income and moderate-income persons must be stated in the CHDO's charter, articles of incorporation, resolutions, or by-laws.

Demonstrated capacity: One commenter suggested that the regulation should be revised to permit an organization to demonstrate capacity if it has a board member or members with experience, or a working agreement with another agency with experience. The commenter argued that although it was the intent of the statute to assist in the capacity building of new nonprofit organizations, the proposed regulations favor those cities with established CHDOs.

The Department emphasizes in response that the nonprofit, to qualify as a CHDO, must either hire staff or contract for the development of the appropriate capacity, in order to satisfy this criterion. Part-time board members' experience does not demonstrate sufficient organizational capacity. A newly formed non-profit may contract for this experience, or be targeted for technical assistance provided under the HOME Program until it builds expert knowledge within its staff.

CHDO: One respondent suggested that limited equity cooperatives or leasehold cooperatives be included within the definition of CHDOs. The Department believes that such a limited focus organization does not satisfy the Congressional intent to foster nonprofit organizations with community-wide interests and long-term housing objectives.

Nonprofit Definition

The Department received 11 comments on the definition of nonprofit organizations. The comments generally fall in the following three categories: (1) The requirements for board membership; (2) the ability to exclude "shell" nonprofit organizations; and (3) the definition of "nonprofit."

There were seven comments dealing with board composition. Three commenters objected to having one-third of the board members be low- and moderate income persons, thereby requiring an income test for membership on the board or restricting participation by non-low- and moderate-income persons who have successfully developed significant numbers of units of housing for occupancy by this target group. Four commenters were concerned about, and objected to, the lack of inclusion or the exclusion, from the board, of public nonprofit entities which have also successfully developed significant numbers of units of housing for low- and moderate-income families. One commenter believed that the definition should require the board member to be a resident of the community, in order to address the issue of ensuring accountability to the low-income residents.

In response, the Department wishes to clarify that there is no requirement regarding governing board composition for nonprofit organizations, except for those that wish to qualify as community housing development organizations.

Nonprofits that do not qualify as CHDOs may participate in the HOME Program to the degree participating jurisdictions wish to involve them.

The Department has revised the definition "community housing development organization" to incorporate the definition of "nonprofit organization." The statutory definition of "nonprofit organization" has meaning only in the context of the definition of community housing development organization. Nonprofit organizations not meeting the statutory definition are not precluded from participating in the HOME Program; they just do not qualify as community housing development organizations.

Six commenters addressed the issue of "shell" nonprofit organizations (nonprofit organizations that are owned or sponsored by for-profit entities). The commenters suggested that the rule missed the mark because the drafters misinterpreted or did not consider the intent of Congress. Five of these commenters suggested that the rule would not achieve the intent of the statute in preventing "shell" nonprofit organizations from receiving HOME funds set-aside for CHDOs. The proposed rule addresses the issue of for-profit affiliation and control by stating that for-profits may establish nonprofit organizations as long as the for-profit entity appoints no more than one-third of the nonprofit's governing board. Since the third of the board appointed by the for-profit might be empowered to appoint the remaining members of the governing body, the commenters claimed that this limitation would be of little practical value. These commenters suggested that, to prevent the control of nonprofits by for-profit entities, the language should be changed to preclude a for-profit from appointing, directly or indirectly, the governing board of a nonprofit organization. One commenter wanted stronger language to prevent "shell" nonprofit organizations from participating in the program.

The Department is sympathetic to the issue of for-profit entities (usually real estate and construction-related businesses) establishing nonprofit organizations under state law for the purposes of securing low interest, public funds. However, the Department is also aware of publicly spirited for-profit entities that have set up, or helped to set up, nonprofit organizations that sincerely serve low-income persons. The Department has revised the rule by precluding the creation of CHDOs by for-profit businesses whose primary purpose is the development or management of housing (e.g., builders, developers and real estate property management firms). Additionally, the for-profit business may only appoint one-third of the board members and a board member who is appointed by a for-profit business that created the nonprofit may not appoint the remaining two-thirds of the board members of the organization.

Concern was expressed by several commenters regarding local government sponsorship of nonprofit organizations that would qualify for HOME funds. The claim was made that despite the restrictions in the proposed rule, local officials could appoint the entire governing board of a nonprofit organization.

The Department does not want participating jurisdictions to control CHDOs; therefore, the regulation has been revised so that although a jurisdiction can create a CHDO, it cannot appoint more than one-third of the board members, and the CHDO board cannot consist of more than one-third public officials.

One commenter wanted HUD to use a consistent definition of nonprofit organization and suggested the use of the definition of community-based nonprofit created under title VI, Preservation. The definition of non-profit used in the rule is governed by the statute.

Section 92.3 HOME Funds for Indian Tribes

Three comments were received on this section. The commenter requested clarification on the proposed coordination of HUD funds to Indians. There were several comments requesting additional clarification on the competitive criteria for selection to receive HOME funds. The second criterion, local administrative capacity, was also called into question without HOME funds being eligible for administrative costs. With regard to the coordination of funds issue, the sentence has been deleted as not being appropriate regulatory language, although it is the Department's intention, to the extent feasible, to coordinate the distribution of resources to Indian tribes. The criteria for selection will be described in detail in the Notice of Fund Availability (NOFA). Although administrative funds are statutorily prohibited for participating jurisdictions, the Department is permitting Indian tribes to use up to 15 percent of the grant for administrative costs. Unlike units of general local government, Indian tribes have limited ability to raise resources. To assist the user, the regulation for Indian tribes has been expanded into a separate subpart (Subpart M).

Subpart M provides more guidance on the applicability of civil rights authorities to Indian tribes. Section 92.630(a) makes it clear that section 282 of NAHA applies to all Indian tribes. Section 282 is a HOME Program-specific prohibition against being excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity funded in whole or in part with HOME funds, on the grounds of race, color, national origin, religion, or sex. Section 92.350(b) notes that Indian tribes that are subject to the Indian Civil Rights Act (Indian tribes exercising recognized powers of self-government) are not subject to title VI of the Civil Rights Act of 1964, the Fair Housing Act, or Executive Order 11063.

Sections 92.351 and 92.352 provide the regulatory framework for compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act. These sections reflect the Department's current policy in this area, and are comparable to 24 CFR 905.165 and 905.175, which were adopted for the Indian Housing Program by an interim rule published on June 18, 1990, at 55 FR 24722.

Subpart B—Allocation Formula

Section 92.50 Formula Allocation

General Comments About the Basic Formula

Two comments requested more background on how the formula factors worked to meet statutory criteria. The questions from several comments suggested more background would be helpful concerning HUD's intentions in selecting and weighting the factors.

The formula factors are intended to work together as a system of indicators to meet the statutory criteria. Criteria may be principally met by one formula factor, but in some cases they are met by two or more factors. For example, the statutory criterion for inadequate housing supply is partially reflected in low vacancy rates and partially in high rent burden. Also, the criterion for relative fiscal incapacity is reflected by a combination of high poverty and low per capita income.

The factors are generally weighted evenly, because no statutory criterion is given explicit emphasis. However, the Department has given half weight to two factors—the vacancy factor and the per capita income factor—because the data has limitations and because these formula factors are combined with others to reflect the statutory criteria.

The weights determine the portion of the funds allocated on a given factor. A jurisdiction's share of this portion is based on its share of the total of the formula values for all similar jurisdictions.

Two comments indicated that there was too much emphasis on 1980 census data. One comment recommended that HUD explore ways to marginally update the 1980 data.

Four of the six factors are based solely on 1980 census data. Data on rental vacancies, rental units with one of four problems, pre-1940 rental units occupied by the poor, and poor families are all from the 1980 census. For these factors, the 1980 census is the only standard source for data covering all units of governments. The statute requires the data to come from a standard source.

While post-1980 census estimates are not available for these four factors, they are available and are used for the per capita income and population factors. The data from the 1990 census will be available for all units of government in the fall of 1992. The Department expects to use these data in the following fiscal year.

The Department is exploring with the Census Bureau the continuance of the per capita income estimates series during the 1990s. Additionally, the Department is discussing an expansion of the small areas estimate program to include poverty and other income data.

The factor for the cost of producing housing is partially based on data from the R.S. Means Company. The Census Bureau and HUD do not have alternate data which are a direct measure for the statutory criterion.

There were three comments to the effect that the formula was too targeted to certain areas, such as older parts of the country and areas with tight housing markets. The individuals expressing these comments believed that funds should be spread more through the use of population-based adjustment or some other means. One comment noted that HUD indicated that the formula should reflect housing need in different parts of the country, but does not describe how that would be accomplished.

The factors were chosen to be responsive to the criteria established in the statute. While population is not a statutorily-mandated criterion, the statute instructed that the allocations not be excessive to a given area and should reflect the need for geographic distribution that appropriately reflects housing need in each region of the nation.

The factors do contain regional biases. Pre-1940 housing, even when restricted to renter housing occupied by the poor, favors older regions and communities. Poverty and poverty-related data are helpful for southern regions and rural areas. High production cost and low vacancies favor coastal areas. On balance, the formula factors do reflect need for various regions.

One comment noted that the formula excludes data on homeowner units.

The formula places 70 percent of the weight on renter-based factors and 30 percent on population-based factors. The emphasis on renters is appropriate, given the expectation that most of the funds will be expended on rehabilitating rental units. The funds for homeowners will be spent primarily to help first-time homeowners—people who are for the most part current renters.

A comment was made that HUD should clarify what it means by "studying" the formula when updated Census data are available. Another comment indicates that more precise measurements need to be developed for the six factors to reflect the statutory criteria.

The formula factors are either taken directly from other formulas or are close variations of factors in other formulas. The data for the factors are generally available and have had some previous public review. On the other hand, other untested substitutes for the factors may prove to better represent the statutory criteria.

The Department intends to acquire 1990 census data which might also validly represent the need specified in the statute. Worthwhile suggestions made in the comments to the proposed regulations will be pursued. The 1990 data will first be made available in the fall of 1992. The study will be conducted in federal fiscal year 1993. Any recommendations for change will be made to Congress in the summer of 1993.

Specific Comments on Factors

Factor l—Vacancy-adjusted Rental Units

Four comments were received on Factor 1 of the formula for allocating HOME funds. Comments questioned the definition of this factor and how well it specified the shortage of low-income housing.

This factor is computed by multiplying the ratio of the national rental vacancy rate over the jurisdiction's rate by the number of rental housing units occupied by poor persons in the jurisdiction. All the data is from the 1980 census. The factor is higher for jurisdictions with tight rental markets and a large number of rental units occupied by the poor.

Since it is difficult to measure vacancy rates with precision, the 1980 census is the only consistent nation-wide source of data for all jurisdictions. Housing markets with low vacancy rate have generally remained tight throughout the decade.

The Department has placed less weight on this factor, partially as a result of the relative weakness of the data. The second factor, which identifies greater than 30 percent rent burden as a problem, also helps to reflect shortage of affordable housing for low-income renters.

Factor 2—Occupied Rental Units With at Least One of Four Problems—Overcrowding, Incomplete Kitchen Facilities, Incomplete Plumbing, or Greater Than 30 Percent Rent Burden

Four comments on this factor suggested that rent burden should not necessarily be a part of this factor (which otherwise reflects substandard or inadequate housing), but should be a separate factor. One comment recommended adding a fifth problem—deterioration—and changing the factor to occupied rental units with one of five problems.

A rent burden of more than 30 percent is the major component of the four problems for most jurisdictions. This factor is a reasonable one in this system of indicators designed to represent, collectively, the need for affordable housing. As indicated earlier, there is no intention that this factor simply correspond to the single criterion on substandard housing.

Comparison of this factor to the American Housing Survey across regions and type of jurisdiction shows that it corresponds well to worst-case housing conditions. The Census Bureau does not have a standard definition of substandard or deteriorated housing which can be used in the formula. Nevertheless, the study of 1990 census data will examine alternative ways of specifying the statutory criterion, based on analysis of housing conditions reported in the American Housing Survey.

Factor 3—Rental Units Built Before 1940 and Occupied By Poor Persons

Eight comments (including 3 UGLGs, two CDAs, and one each from a PIG, HOC, and HFA) were received on this factor and all recommended using a later year than 1940 for indicating rental units likely to be in need of rehabilitation. Most of the comments recommended using pre-1950 rental housing occupied by the poor. A number of these comments stated that using 1940

strongly biases the formula toward older cities and against areas of the country which have newer, but nonetheless, aged, housing. Further, one comment stated pre-1940 served as the basis for the funding formula for the Community Development Block Grant Program when it was developed more than ten years ago and, thus, it makes sense to move this indicator forward by ten years. Other comments indicated that surveys of their jurisdictions' deteriorated stock in need of rehabilitation show that a large part was built after 1940.

This factor derived from 1980 census data. Along with rental housing for the poor and rental housing with one of four problem conditions, it signals rental units likely to be in need of rehabilitation. It helps to reflect the type of need in older regions and jurisdictions.

In response to comments raised by some members of Congress as well as comments from many jurisdictions, the Department examined the effect of substituting the number of pre-1950 rental units occupied by poor families for this factor. In general, the effect was to shift some funds to southern and western areas at the cost of areas that did not experience relatively high housing development in the 1940s. Many of the large Northeastern and Midwestern cities are not substantially affected by this change. Since this factor is also based on poor families as compared to poor persons, there is some shift from areas with a high proportion of poor individuals, such as college towns. The use of poverty families makes this factor consistent with the poverty factor.

The Department also compared this factor to housing likely to be in need of rehabilitation as measured by the American Housing Survey. The comparison indicated that the pre-1950 data was better correlated to need across region and type of jurisdiction than the pre-1940 data. As a result of these analyses, the Department is changing the formula to use pre-1950 rental housing with poor families.

Factor 4—Cost of Producing Housing

Four comments were received on the factor proposed to reflect the cost of producing housing. One comment requested a more complete definition of the production index. Another questioned the reason for multiplying the cost of production index by a factor which identifies needs. Two comments on this factor stated that the cost of producing housing should be expanded to include a measure of land cost as well as construction cost.

This factor measures the cost of producing housing by multiplying the ratio of cost index for a given jurisdiction over the national cost index by the number of rental units with one of four problem conditions in the jurisdiction (factor 2 above). The ratio is multiplied by the need factor to yield a value which can be used to compute a share of need in determining the amount of funds a jurisdiction would receive on this factor. As discussed in response to comments about that factor, the second factor is the one most representative of rehabilitation needs.

The cost index is based on the index produced by the R.S. Means Company to adjust overall national labor and materials costs to those of local areas. The Means Company has been producing these areas adjustments on an annual basis for over 30 years to assist contractors in estimating local costs. Means provides the index for about 200 communities. HUD uses the index to reflect cost throughout the metropolitan area for areas that contain such a community. For metropolitan areas that do not contain a central city with a Means index, HUD develops an estimate of what the index would be, based on the indices for comparable jurisdictions within the same state. For states, HUD develops a cost index based on indices for the small metropolitan areas within the state. HUD estimates are reviewed with the Means Company, and adjusted as necessary based on Means' best information.

The Means index is also used in the public housing Comprehensive Modernization formula. There are no census data available to make a direct measurement of the statutory criterion. The Means index is comparable to the indices produced by other companies and is preferable to other indices because it provides direct estimates for more communities. While the index has no component for land cost, it is generally correlated to high land cost experienced in the coastal areas.

Factor 5—Number of Families at or Below the Poverty Level

Three comments suggested that HUD define poor persons as those whose incomes are at or below 30 percent of the area median income instead of at or below the poverty level. There was a comment that no definition for "poor" is provided. Related to this, the comment states that poverty is measured by families in poverty rather than families and individuals in poverty.

The definition of poor families is the definition used by the Census Bureau for the 1980 census. There are no post-1980 census estimates that are comparable for all jurisdictions. Poverty levels vary by family size and are based on the income necessary to meet basic nutrition needs.

Portions of the other factors also are correlated to low-income. Specifically, factor one is based partially on poor renters, and factors two and four are based partially on renters paying more than 30 percent of their income for rent. Limiting this factor 5 (as well as the revised factor for pre-50 rental units) to poor families helps to reduce the benefit college-dominated jurisdictions derive from low-income college students.

Factor 6—An Adjusted Net Per Capita Income (pci) Index Multiplied by Population

Six comments were received on this factor. Most indicated the per capita income was not a direct or a complete measure of fiscal incapacity. They recommended that the Department use more direct measures, such as real estate taxes or taxes relative to income, or the tax burden for families and businesses or the representative tax system (as developed by the Advisory Council on Intergovernmental Relations).

This factor is computed by multiplying the population of a jurisdiction by the ratio of a national adjusted per capita income over a jurisdiction's adjusted per capita income. The per capita income is adjusted by subtracting from both the national and the jurisdiction's per capita income the per capita income for a three-person family at the poverty level. This factor is weighted at 10 percent. A jurisdiction's share of funds on this factor is greater than its share of the population to the extent its per capita income falls below the national average.

The adjustment which subtracts the per capita income for a three-person family causes the factor to be targeted more to need. Thus, the adjustment causes the ratio for high per capita income jurisdictions to be farther apart from the ratio for jurisdictions with low per capita income than if no adjustment were made.

As noted in response to other comments, this factor is conceived as being used in conjunction with the poverty factor to identify jurisdictions that lack fiscal capacity. Poverty is related to the fiscal burden that communities must support and per capita income represents the economic well-being of jurisdictions. While neither measure directly represents fiscal incapacity, a study conducted for the Department indicates that these variables do serve as proxies for other

partially-available data that directly reflect fiscal incapacity.

The per capita income data are generally available in 1987 estimates for all jurisdictions. These data were previously a part of the revenue sharing formula. The data recommended in comments do not exist for all jurisdictions from a standard source and have not undergone thorough testing to analyze their effects in this formula. In the study of the 1990 census data, the Department will review the suggestion made in the comments to determine whether there are options that would better represent fiscal incapacity.

Section 92.51 Allocation of Funds—New Construction

Fifteen comments supported the view that HUD should be more liberal in allowing appeals for new construction eligibility. Some believed that all jurisdictions, regardless of size, should be allowed to appeal by presenting to HUD objective data on rental housing market conditions. Other commenters believed HUD should allow states to make this decision on eligibility based on the CHAS and local needs and opportunities.

The Department proposed to let all jurisdictions appeal based on errors in data used for eligibility, but only small jurisdictions (with populations under 25,000) could appeal based on alternative data on local market conditions. Given the limitations of the data available to make eligibility determinations and the restriction of the system which limits eligibility to approximately 30 percent of participating jurisdictions, the Department agrees with the commenters who recommended changing the appeals process to allow all jurisdictions to appeal, based on objective local data reflecting local market conditions. The statute requires the Department to make determinations and to provide opportunity for appeals. Therefore, the regulation could not allow states to make this decision.

One comment indicated that the rental housing production formula relies too heavily on 1980 data and that vacancy rates and turnover rates are now dramatically different in many areas. The commenter recommended that more current estimates of market conditions be used in allocating rental housing production funds.

While the Department has agreed to use more current estimates in the appeals process, it cannot use local data in the eligibility system. The statute requires the use of standard data. The data from the 1980 census are the only data available to make eligibility determinations for all jurisdictions.

Furthermore, the Department has constructed the eligibility system to reduce the need for current data. The new construction criteria compare a jurisdiction's values against a common threshold and then require that only a limited number of thresholds be met. Thus, the precise value does not matter as long as a community is above average on at least three thresholds.

One comment recommended a new criterion be added to more directly measure the relationship between high rehabilitation cost and the cost of new construction. Two comments recommended limiting the low vacancy and low turnover factors to units that rent at below Fair Market Rent levels. Two comments recommended revising the factor which specifies one of four problems to specify separately the various problems. Other comments recommended re-weighting or eliminating other factors which were seen to be less helpful.

The factors the Department could propose were limited by the availability of standard data for all jurisdictions. The factors are reasonable choices based on the statutory criteria. When 1990 census data are examined in order to analyze alternatives for the HOME formula, the Department will also examine alternatives for the new construction formula.

Eight comments favored expanding the number of communities eligible to use HOME funds for new construction, since the statute authorizes the Secretary to qualify at least 30 percent of communities for the new construction list. This minimum should not be treated as a maximum. Comments suggested that the recommended expansion could be achieved by eliminating the requirement for the composite criterion, or by eliminating the requirement that jurisdictions pass three of five tests.

The Department believes that the need for new construction is not as prevalent as the need for rehabilitation, and that it is appropriate to limit eligibility so that it does not substantially exceed 30 percent of the jurisdictions. Furthermore, by liberalizing the appeals process, tight market areas that are not identified by the eligibility system can be added to the list.

Two comments disagreed with HUD's proposal to allocate 80 percent of the rental housing production set-aside to localities and 20 percent to states. These commenters stated that HUD should apply the rental housing production formula to states and localities in the 60/40 percent split that the basic HOME formula uses.

The Department proposed the 80/20 percent split for the rental production formula because the level of need for new construction is proportionally stronger in metropolitan cities and urban counties under the new construction formula than for the HOME basic formula funding. Under funding levels of full authorization, the level of need (as measured by formula factors) for participating metropolitan cities and urban counties is approximately 60 percent under HOME and 80 percent under new construction.

A community development agency and a public interest group recommended that the formula for determining areas that should receive a rental housing production set-aside should include a factor for homeownership. The CDA also stated that a difficulty throughout the program is the link between the CHAS, that may establish homeownership as a primary goal throughout the state (particularly in rural areas), and the lack of opportunity within the HOME Program to use funds for homeownership.

The set-aside is for rental housing production. The Department believes it is not appropriate for the formula to include a factor for homeownership. In addition, although homeownership is an eligible use of HOME funds, the HOME Program is designed primarily to expand the supply of affordable rental housing, largely through rehabilitation.

Subpart C—Participating Jurisdictions

Section 92.101 Consortia

There were five comments received on this section. The commenters sought advice on how and when a consortium should be formed. The Department has prepared and published separate guidance on this issue in the Federal Register. (56 FR 34094, July 25, 1991. See also extension of time for responses published on July 31, 1991, 56 FR 36163.)

In the interim rule, the Department is requiring that the term of the consortium be for three years, to demonstrate serious intent and to curtail an "in and out" approach to funding. Jurisdictions may join a consortium during the three-year period; however, none will be allowed to drop out. If the consortium contains an urban county, the period of qualification of the consortium will be coterminous with the period of qualification of the urban county. Therefore, the period of qualification may be less than three years if the consortium containing the urban county

is in the second or third year of its urban county agreement.

The Department is considering whether or not to require, in the final rule, each consortium to contain either a metropolitan city or urban county, or otherwise to limit the size of consortia. The Department is concerned that consortia have sufficient administrative capacity to administer the HOME Program. There also is concern about very large, e.g., multicounty consortia, and the effect of such large consortia on the HOME formula. Public comment is specifically invited on these issues.

Section 92.102 Participation Threshold Amount

Nine comments were received.

Four commenters suggested that to make up any shortfall of funds to reach the $750,000 threshold, CDBG, as well as other federal funds should be permitted.

One commenter, a local government that participates in the Rental Rehabilitation Program through a state program, suggested that states be required to allocate HOME funds to it and other communities at a level proportionate to that currently used for Rental Rehabilitation Program funds.

One commenter stated that states should not be permitted to transfer new construction set-aside funds to non-eligible communities, as the regulation seems to permit.

One commenter requested clarification concerning whether state and local contributions to meet the threshold requirements would be considered matching funds.

One commenter suggested that states may not be willing to provide funds to meet the threshold, since the states would receive the funds if a local jurisdiction could not fund the shortfall. The commenter requested that HUD develop guidelines that would provide incentives to states to provide those funds.

With regard to making up the shortfall of funds to reach the $750,000 threshold, the statute requires that state or local funds must be provided, which would exclude CDBG or other federal funds. It is the Department's hope that state and local governments will coordinate their resources to the best advantage, allowing all eligible jurisdictions to participate. The Department cannot dictate that states provide HOME funds to local jurisdictions, or specify a level of resources to be provided to local governments. Since meeting the threshold is a one-time eligibility requirement, it is anticipated that states voluntarily will provide HOME funds to local jurisdictions to meet this requirement. States may transfer rental housing production set-aside funds to any jurisdiction; however, only jurisdictions eligible for new construction, based on a list to be published by the Department, may use the funds for new construction. Jurisdictions not on the new construction list would have to use the rental housing production set-aside funds for substantial rehabilitation. Funds provided to make up the shortfall cannot be counted as a matching contribution.

Section 92.106 Revocation of Designation

Two comments were received.

One commenter expressed concern that revocation of designation as a participating jurisdiction should be determined on annual appropriations, and not on an unchanging dollar figure.

One commenter suggested that specific expectations be developed, detailing what constitutes "unwilling or unable" to carry out the program, in order that participating jurisdictions will know how this will be measured.

The revocation funding levels are established by statute, but the authority to revoke the designation is permissive, not /mandatory. Jurisdictions falling below the $500,000 threshold may retain the designation even when they do not receive funding. (A local jurisdiction must receive at least $500,000 under the formula in order to receive an allocation.) With regard to revocation based on conduct or capacity, the commenter is referred to § 92.551, corrective and remedial actions.

Subpart D—Program Descriptions

Section 92.150 Submission of Program Description and Certifications

There were 16 public comments on this subpart. Three commenters objected to the background discussion of providing HOME funds to assist as many families as possible and not combining assistance to deepen subsidy for a few. The statement was seen as federal intrusion into state and local discretion, and as counter to the needs identified in the CHAS.

Three commenters requested guidance on the combination of subsidies. One commenter indicated that the language in the certification would suggest a formal request for proposals and evaluation of all proposals before committing any HOME funds to one project.

With regard to the submission of the program description, six commenters were against the requirement, citing duplication of CHAS requirements, difficulty of preparation in 45 days, and the need to update as changes become necessary and get HUD's approval. Another commenter suggested an initial submission with yearly updates. Clarification was also requested on the contents of the HOME investment partnership agreement.

In response to the comments, it was not the Department's intention to second-guess the jurisdiction's decision on the level of subsidy, especially when making housing affordable to very low-income families. The statement in the preamble was a caution about oversubsidizing projects and a reminder of the requirement that jurisdictions must not provide more subsidy than is required when combining HOME funds with other subsidies. While the Department intends to provide further guidance on the combination of subsidies, participating jurisdictions may wish to look at the Administrative Guidelines: Limitations on Combining Other Government Assistance With HUD Housing Assistance, published in the April 9, 1991 **Federal Register**, Vol. 56, No. 68 and guidance currently employed by allocating agencies of low-income housing tax credits. Participating jurisdictions must adopt a procedure to evaluate projects when combining HOME funds with other subsidies.

With regard to the submission of the program description, the Department has decided to retain this requirement for many reasons. First, the statute requires participating jurisdictions to submit, and HUD to approve, forms of investment to be used by the participating jurisdictions which are not listed in the regulation, as well as the participating jurisdictions' guidelines for resale for HOME assistance to first-time homebuyers. Second, the statute requires participating jurisdictions to submit certifications to HUD. Third, the Comprehensive Housing Affordability Strategy (CHAS) does not require the level of detail on the HOME Program that the Department needs to make judgments concerning whether HOME funds are being used in a manner consistent with the jurisdiction's CHAS.

With reference to changes during the year, a participating jurisdiction is not required to submit amendments to the Department, but simply to note the changes (other than those HUD is statutorily required to approve) in its program description file. If the changes will continue for future allocations, the changes would be incorporated in the next annual submission.

Forty-five days does not appear to present a problem in the development of a program description, based on past program experience. The HOME

investment partnership agreement will be similar to the grant agreements that the Department has used for the CDBG and Rental Rehabilitation Programs.

The rule has been revised to clarify that a formal request for proposals is not required in the selection of proposals for HOME funds.

Section 92.200 Public-Private Partnership

Two public comments were received on this section. One commenter restated the housing authority's right to be involved in the implementation of a jurisdiction's CHAS, but asserted that there were no incentives, and perhaps some disincentives. The second commenter believed that the nonprofit sector should be the primary developer of affordable housing, and that nonprofits and local governments should control the real estate to ensure affordability in perpetuity.

No specific rule changes were suggested, and the Department has made no changes in this section.

Section 92.201 Distribution of Assistance

Five public comments were received on this section. One commenter was concerned that the requirement that "each participating jurisdiction must, insofar as is feasible, distribute HOME funds geographically within its boundaries and among different categories of housing need" will be strictly applied and would penalize a jurisdiction that is using other funds to meet its housing needs. HUD was asked to define its standards for determining what would constitute a disproportionate level of assistance for any one housing need.

One commenter argued that states should be required to consider local CHASs when considering projects in their areas. One urban county commenter also wanted clarification whether § 92.201(a) restricted the expenditure of HOME funds solely to the boundaries of the jurisdiction. The commenter favored a county-wide approach.

A commenting state government felt that while the funds were distributed by the state based on objective data, the state should be guided by its CHAS and its own discretion. The commenter wanted to encourage wealthier communities to embrace affordable housing projects.

Another commenter, on behalf of states, requested that the Department allow states to interpret "need" to include the necessity of enriching other areas of the state beyond those most in need—pointing out the benefit of developing housing that would provide greater choice for residents.

Another state commenter suggested adding "insofar as is feasible" to paragraph (b), state distribution of resources, as well as substituting "nonmetropolitan" for "rural", because identification of rural need is not required by the CHAS rule or defined in the HOME rule.

The Department will take into account the distribution of HOME funds in conjunction with other resources in evaluating consistency with the priorities established in a jurisdiction's housing strategy. An evaluation of consistency with a state or local housing strategy must be done over time. It is certainly possible that a state could distribute resources equitably to all areas of the state, over time. The language on the distribution of state resources parallels the language of the statute and has not been changed. With regard to the use of funds within the jurisdiction's boundaries, the rule applies to urban counties and limits the use of funds in local governments participating in the urban county.

Section 92.202 Site and Neighborhood Standards

Two public comments were received on this section. One commenter contended that because of its unique population characteristics and unusually high land costs, the language should be modified to allow some flexibility. Another commenter claimed that the requirement would create additional paperwork and that any jurisdiction certified by HUD to meet FHA's local area certification process should be assumed to meet HUD's siting policy.

The Department has retained this requirement and believes that there is sufficient flexibility in the process to accommodate the concerns raised by the commenters. FHA's local area certification process applies only to single family subdivisions and does not meet the requirements of this section.

Section 92.203 Income Determinations

One commenter requested that medical expense deductions, currently not allowed under 24 CFR part 813, be allowed for households with children.

While the Department appreciates the commenter's concern, the suggested change is beyond the scope of this rulemaking and has not be made.

Section 92.204 Applicability of Requirements to Entities that Receive a Reallocation of HOME Funds, Other than Participating Jurisdictions

Commenters cited the absence of matching contribution requirements on reallocations—a feature that may cause the unintended result of states declining participation in the program and allowing reallocations to localities that would not have to meet the matching contribution requirements of the state allocation. The commenters requested that this disincentive to state participation be addressed in the interim rule.

In not requiring matching funds for reallocations, the Department's intention was to provide additional flexibility on this difficult requirement and to avoid a disincentive to state participation. States are major participants in the HOME Program, with 40 percent of HOME funds directed to states to address overall housing needs within the state, both in rural and urban areas. The Department has not changed this section, but will consider the experience of states in the period between an interim and final rule for the program, reserving the right to require a matching contribution on reallocated funds if states do not participate for this reason.

While supporting reallocation of funds, another commenter suggested that the time limits on committing and expending HOME funds must take into account the long delays inherent in large, multifamily projects. The statute sets out specific deadlines. For a full discussion of these deadlines, see § 92.500, HOME Investment Trust Fund, below.

Section 92.205 Eligible Activities

There were twelve public comments on this section. There were several comments requesting clarification on Departmental policy. Commenters asked whether a conversion is new construction or rehabilitation, whether assistance to first time homebuyers is eligible, whether HOME funds can be used to make up pool insurance reserves, and whether the certificate of occupancy for new construction must be residential.

One commenter suggested that acquisition of vacant land and demolition should not be limited to a particular affordable housing project. Instead, jurisdictions should be allowed to take advantage of particularly depressed market conditions. Another commenter indicated that allowing acquisition of vacant land but requiring commitment of construction funds within 90 days is not realistic. Twelve to 18 months would be preferable. The Department was criticized for characterizing acquisition of recently constructed, bank-owned real estate, and other distressed properties without a certificate of occupancy, as new

construction. Prohibiting turnkey projects would avoid abuses of the new construction limitations. Another commenter suggested that a certificate of occupancy as an indicator of new construction may not be applicable to all jurisdictions. The commenter suggested a substitute definition that covered housing completed within one year of commitment of funds and not previously occupied.

Several commenters recommended funding of operating reserves or project-based assistance for rental properties.

Two commenters objected to the requirement that the HOME funds must be repaid if a project is terminated before completion, while a third commenter suggested that this policy be made clearer in the regulation.

The Department has reviewed all these comments carefully, noting in certain instances that inadequate information was provided to determine whether an activity was eligible or not. Conversion of a building would be viewed as rehabilitation unless units were being constructed outside the existing structure. Clearly, assistance to first time homebuyers is eligible and has been added to the list of eligible activities. Certificates of occupancy should be for residential structures. Acquisition and demolition must be done in connection with a specific affordable housing project assisted under this part. The Department has addressed the definition of commitment in § 92.2 by extending the period between commitment and construction to six months. In distinguishing between new construction and existing housing, the Department suggested the use of a certificate of occupancy and will accept other analogous documents. The Department has determined that an initial operating deficit reserve can be an eligible soft cost.

With regard to allowing reserves for replacements or project-based tenant assistance as eligible activities, the Department has determined that although these costs are inappropriate for HOME funding, they may be funded with matching funds.

In response to the requirement that HOME funds be repaid if the project is terminated before completion, the Department believes that production of affordable housing is paramount, and that jurisdictions must evaluate projects and choose those which are most likely to meet that objective. However, the Department is relaxing this standard as it applies to loans under § 92.301, project-specific assistance to community housing development organizations. Sections 92.301(a)(3) and 92.301(b)(3) permit the jurisdictions to waive repayment of the loans if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

Section 92.206 Eligible Costs

There were ten public comments, among which two commenters supported (as those in the previous section) the inclusion of project-based rental assistance and operating reserves up to 2 percent of the total development cost as eligible costs under HOME.

One commenter stated that development soft costs should be an allowable reimbursable expense out of HOME funds. (The commenter did not understand that they were.) Another commenter recommended that nonprofits should be able to use HOME funds for development fees for the nonprofit. Also the costs of educating tenants about the work involved in managing or owning a rental project (or converting it to co-op) should be eligible.

It was recommended by two commenters that the regulation expand eligible cost to include holding costs, environmental studies, utility connections, counseling, impact fees, audits, replacement reserves, and staff time and travel directly relating to supervising or managing HOME activity.

One commenter also asked whether HUD will set limits on builders and developers fees, or whether the participating jurisdiction could exercise discretion.

In response to the comments, developer's fees within customary and reasonable limits are permitted and would certainly be permitted for all developers, whether for-profit or nonprofit. With the exceptions of utility connections, counseling related to informational service (such as affirmative marketing and fair housing as described in paragraph (b)(3) of this section), and project specific audits, the Department views the other costs as administrative and not allowed under the statute.

Section 92.207 Preference for Rehabilitation

Ten public comments were received on this section and all opposed the preference for rehabilitation determination process. Many commenters believed that the determination a participating jurisdiction must make as a requirement for doing new construction under neighborhood revitalization and special needs (namely, that (1) rehabilitation is not the most cost-effective way to meet housing supply needs and (2) housing needs cannot be met through rehabilitation of available stock) is a restriction specifically prohibited under law. Another commenter suggested that if the rehabilitation preference must apply to the two new construction exceptions, the findings under § 92.207 should be made, not in the context of the overall housing situation in the jurisdiction, but only in relation to the specific new construction projects that meet the criteria of § 92.209 and § 92.210.

The Department agrees with the last commenter about the negative consequences of making this test jurisdiction-wide. The regulation has been revised to reserve this section and apply the "preference for rehabilitation" test specifically to new construction in the neighborhood revitalization or special needs context described in §§ 92.209 and 92.210.

One commenter argued that if new construction is proposed to affirmatively implement a fair housing plan or strategy, a jurisdiction should be exempt from the rehabilitation preference and the neighborhood revitalization factors. Such a plan or strategy should be justified in the CHAS. New construction is allowed under special needs to further desegregation or racial deconcentration of housing under the provisions cited in § 92.210.

Another commenter requested that the Department permit the public to comment on the Department's guidance when rehabilitation is not the most cost effective way to meet housing needs. The Department will consider this recommendation.

Section 92.208 New Construction: General

There were four public comments on this section. Three objected to the applicability of the "preference for rehabilitation" test, stating that it made new construction in a particular neighborhood impossible because the city could not meet a city-wide test. The Department agrees, and has revised the rule to apply the preference for rehabilitation test within the neighborhood.

A commenter objected to having to prove that 51 percent of funds has been spent on housing rehabilitation in neighborhood revitalization areas. One commenter believed that the restriction on new construction may create a lack of consistency between housing needs identified in CHAS and the use of HOME funds, especially in rural areas where owner-occupied housing is infeasible for rehabilitation. The commenter felt that the situation was worsened by not considering

homeownership in the new construction formula.

The Department does not agree with the comments, and the interim rule leaves these features unchanged.

Section 92.209 Neighborhood Revitalization

There were 15 public comments on this section, the majority of which felt, as those in the previous section, that the Department was unnecessarily making new construction difficult.

Eight commenters were opposed to the addition of the 51 percent criterion as a way to demonstrate emphasis on rehabilitation in a neighborhood revitalization area. The test was cited as too inflexible and unnecessary, especially in view of the higher matching contribution requirement for new construction. Two suggestions were made: (1) That a jurisdiction file a narrative on its revitalization plan with a focus on its rehabilitation activities; or (2) that jurisdictions provide a certification that 51 percent of funds will be spent on non-new construction activity. Another commenter was concerned that only HOME funds would be counted to meet the 51 percent standard.

Alaska found the neighborhood definition and neighborhood revitalization requirements meaningless in its state context and wants to be able to do new construction in any part of the state.

Another commenter believed that new construction should be allowed in a neighborhood revitalization area as part of a strategy to integrate a neighborhood economically.

Two commenters asserted that the requirement that new construction in a revitalization area must be produced by a CHDO or a public agency was too restrictive. The Department was requested to support a statutory amendment to eliminate this or to add nonprofits.

There was a concern that a neighborhood had to be officially designated in order to qualify under neighborhood revitalization. The commenter wanted any neighborhood targeted in the CHAS to qualify.

Concern was expressed that the definition of neighborhood would preclude designation of a portion of a city less than 25,000 population as a neighborhood. Another commenter felt that this would disqualify a city under 25,000 population which did not have 51 percent of total households with incomes less than 80 percent. The commenter wanted an exception made.

The Department believes that the statutory requirement that the neighborhood revitalization emphasize rehabilitation requires that this emphasis be demonstrated. Therefore, the regulation maintains the provision that 51 percent of all funds (not just HOME funds), spent by the jurisdiction on the neighborhood revitalization program, be spent on rehabilitation of substandard housing.

The Department agrees with Alaska that the definition of neighborhood and the requirements of this section are meaningless in its state context, and suggests that local governments wishing to do new construction appeal to the Department to be added to the new construction list. Allowing new construction in neighborhood revitalization areas to integrate a neighborhood economically is not statutorily recognized.

The Department realizes the statute permits only community housing development organizations and public agencies to do new construction in revitalization areas, and will consider proposing a technical amendment on this provision.

With regard to officially designating a neighborhood revitalization area, the regulation is permissive and includes any neighborhood "designated in comprehensive plans, ordinances or other local documents," and could certainly include a neighborhood designated in the jurisdiction's housing strategy. A jurisdiction of less than 25,000 population may designate a smaller portion of its community as a neighborhood. The regulation has been revised to clarify this point.

Section 92.210 New Construction: Special Needs

There were twelve public comments on this section, the majority of which suggested additional categories of special need.

A commenter objected to the rule's use in this section of "five or more persons" as the measure of "large families." The Department has used "five or more persons" to conform to the definition of "large family" in the CHAS rule (see 24 CFR 91.5, published at 56 FR 4480, 4486, February 4, 1991).

Commenters suggested that the special needs categories should be expanded to include housing for: (1) Homeless persons; (2) persons with disabilities, including persons with AIDS or those testing HIV-positive; (3) single parents with children of both sexes requiring three or more bedroom units; (4) extreme rural conditions; and (5) frail elderly.

The Department is not expanding the list under special needs at this time. The Department believes that there are other HUD programs to address the needs of the homeless and the elderly, e.g., the McKinney Act programs, HOPE for Elderly Independence, and Section 202 Supportive Housing for the Elderly. With regard to three or more bedroom units for families with children of both sexes, the statute was clear that large families receive a priority. While construction of large family units would be justified based on the needs identified in a jurisdiction's housing strategy, occupancy would not have to be limited to families of five or more.

Section 92.211 Tenant-Based Rental Assistance

Four commenters wanted to drop the requirement to use the PHA waiting list. One commenter supported the requirement. This requirement is statutory. Further, there is a PHA waiting list at the county, regional or state level which can be used.

Four commenters wanted the program to allow for project-based assistance. HUD disagrees. The statute clearly specified a tenant-based program.

Several commenters wanted more clarity in the lease and suggested adoption of a model lease. HUD does not wish to prescribe a lease because there are significant differences in state and local law that make such a lease difficult to implement.

In the proposed rule, the Department's requested comment on whether local privacy acts may pose an obstacle to the flow of information concerning waiting list information between jurisdictions and PHAs. One commenter expressed the opinion that there would be no privacy act violation if the notice of availability of the HOME-funded tenant-based assistance were sent by the PHA directly to the family. Another commenter suggested this as a reason not to use the PHA waiting list. Since use of the PHA Section 8 waiting list is statutory, this is not seen as a problem. Another commenter suggested an alternative of giving the PHA right of first refusal. The lack of an significant amount of comment on this issue suggests to the Department that local privacy acts would permit PHAs to share their waiting list information with the jurisdiction administering the HOME Program.

On the comment that the PHA be paid administrative fees, HUD assumes that appropriate administrative fees (not to exceed those already established for the voucher or certificate programs) will be included in any contractual arrangement, regardless of whether the PHA or another entity manages the

program. However, HOME funds cannot be used for administrative fees.

One commenter suggested that the language in this section be modified so that jurisdictions without PHAs could have a tenant-based program. HUD believes that most, if not all, participating jurisdictions will have a PHA. If this is not the case, then a higher-level PHA—a county or state PHA—is generally available.

One commenter wanted the term of the lease increased to 48 months. The 24-month lease (with extension possible if there are additional funds) is statutory.

One commenter wanted enforcement mechanisms added so that owners would have to comply with Section 8 HQS rather than letting contracts lapse. The enforcement mechanism is the cessation of payments and the requirement that the tenant move if the owner does not comply.

Section 92.212 REACH

Two public comments were supportive of this section. HUD will continue to provide lists of properties as they become available to jurisdictions and nonprofit organizations that submit a request to the Chief Property Officer in the local HUD Office. (In some instances, a state would need to request such a list from more than one Field Office having jurisdiction within its boundaries.)

The Single Family Property Disposition Homeless Initiative, contained in 24 CFR part 291, final rule published September 16, 1991, at 56 FR 46952 (making final an interim rule), gives priority consideration for the lease or purchase of HUD-owned properties to homeless providers for a 10-day period prior to public offering. Over 1700 properties have been leased, and 300 sold, in this program. Up to 10 percent of HUD's inventory is available for this purpose.

With regard to establishing fair market value for HUD-owned properties, the Department contracts for single family appraisal services and uses this value to establish HUD's listing price. Uniform Standards of Professional Appraisal Practice are applied. If a property does not sell within 30 days at the initial appraised value, the Chief Property Officer may adjust the asking price. Each property is re-analyzed every 30 days.

Nonprofit organizations and government agencies may purchase properties directly from the HUD inventory at any time and receive a 10 percent discount off the current asking price. This discount represents the savings to HUD where brokerage services are not used. When such transactions occur before the property's public offering, no greater discount is permissible because of HUD's obligation to protect the value of the mortgage insurance fund.

Section 92.214 Prohibited Activities

There were 25 public comments on this section, 21 of which opposed the prohibition on operating reserves, while six commenters opposed the prohibition on project-based rental assistance. The understanding of operating reserves varied greatly, with one commenter using it interchangeably with reserves for replacement. Many saw operating reserves as a fund available during lease-up to guarantee that the project met its obligations before full occupancy, while others saw it as a longer-term capital reserve to handle unanticipated increases in operating costs. The reasons to allow operating reserves included guaranteeing very-low income occupancy, providing a cushion for nonprofits, allowing states working on preservation efforts to handle buildings that have experienced severely delayed maintenance, and to secure private lender participation. It was suggested that localities be made to justify why operating reserves make more sense than capital lending up-front, and that operating reserves be limited to new construction. One commenter suggested that matching funds be used for operating reserves as long as the project is in compliance. Another commenter asked if HUD would prohibit Section 8 project-based assistance in a HOME project.

As indicated under § 92.205, the Department has revised the regulation to make an initial operating reserve an eligible cost. The regulation has also been revised expressly to permit reserves for replacement and project-based tenant assistance as an eligible use of matching funds in HOME projects, but the regulation maintains the prohibition against the use of HOME funds for these costs. The Department does not intend to prohibit Section 8 project-based assistance if that assistance is available and a jurisdiction wishes to use that resource in a HOME assisted project.

Six commenters were very concerned about the lack of administrative funds, without seeming to realize that this restriction is statutorily required.

The Department has added a new paragraph (h) to prohibit the use of HOME funds, other than for tenant-based assistance, in a project that has been previously assisted with HOME funds while the project is subject to a period of affordability under § 92.502 or § 92.504. Additional HOME funds may be committed to such a project no later than one year after project completion, but the total amount of HOME funds committed to the project may not exceed the maximum per-unit subsidy amount allowed under § 92.250.

Section 92.215 Limitations on Jurisdictions under Court Order

There were several commenters on this section. One commenter asserted that the regulation, which mirrors section 224 of the statute, is against the public interest. The commenter asked HUD to seek a statutory amendment.

The other commenters thought that the regulation might have the effect of encouraging participating jurisdictions to delay or unduly limit swift and effective responses to violations of civil rights laws. These commenters suggested that the regulation clarify that if a participating jurisdiction is found to be in violation of civil rights laws, HUD is prepared to facilitate, encourage or require the use of non-HOME funds to implement effective remedies. The regulation should also specifically allow appropriate race-conscious remedies where appropriate to address or redress alleged discriminatory housing practices. The regulation should also state that HUD will provide technical and legal assistance to these jurisdictions to develop effective remedies.

The Department has decided not to accept the above-summarized suggestions. The regulation follows the statutory language in section 224. The Department is not sure what effect amending the regulation in the manner described would have; however, the Department has sufficient authority under the civil rights laws (cited in § 92.350) to take action where a participating jurisdiction has been found to violate civil rights laws.

Section 92.216 Income Targeting: Tenant-Based Rental Assistance and Rental Units.

There were 10 public comments on this section. Three commenters suggested permitting delegation of the eligibility determinations and annual reexaminations of income to project owners, sponsors, or the PHAs. While the jurisdiction may require project owners, sponsors, or subrecipients or contractors to make the determinations and re-examine incomes, the Department will hold the participating jurisdiction responsible. Three others suggested that only initial determinations were necessary, not realizing that the scope of the

requirements as stated in the rule is statutory.

One commenter cited the huge paperwork burden this requirement imposes, while another suggested that HUD specify who has this responsibility. Another commenter stated that annual reexaminations and adjustments of rents would be in conflict with the commenter's rent stabilization laws. While the Department is sympathetic with the workload considerations without HOME eligible administrative costs, the ongoing recertification requirements are statutory.

Another commenter expressed concern about the trend toward large-scale rental housing in the statute. The Department agrees that the statute appears to favor large-scale rental properties, but believes that participating jurisdictions have flexibility in the selection of projects.

Another commenter wanted to exclude current tenants in newly acquired buildings from the requirement that 90 percent of funds be spent on families below 60 percent of median income, apparently not understanding that this statutory requirement applies to the fiscal year allocation and not to specific projects.

Matching Contribution Requirements—General Comments

Probably the greatest number of comments on the proposed regulation addressed the matching fund requirements.

Many general comments were made about severe fiscal distress that states and local governments are experiencing. Commenters asked that HUD be more flexible with reference to matching contribution requirements. Many commenters wanted HUD to pursue legislative changes on all aspects of the matching contribution requirement.

Section 92.218 Amount of Matching Contribution

The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, Public Law 101–139, 105 Stat. 736, approved October 28, contains a proviso waiving the matching contributions requirements with respect to HOME funds appropriated in that Act. The Department has added a footnote to the rule making it clear that participating jurisdictions are not required to comply with the matching contributions requirements in the rule with respect to HOME funds drawn down from amounts appropriated in the above Act, regardless of when those funds are drawn down.

Several commenters objected to the required matching contribution percentages for the various activities. The percentages are statutory (Section 220 of NAHA).

One commenter asked that the regulations be clarified so that acquisition of standard housing (not requiring rehabilitation) has a 25 percent match. For acquisition of an existing structure without rehabilitation, the match is 25 percent, but for acquisition of housing with a certificate of occupancy within the last year, the match is 50 percent.

Several commenters addressed the calculation of the match based on project designation. HUD explained in the preamble to the proposed regulation that each project would be set up in the Cash and Management Information System and would be designated as a new construction, substantial rehabilitation, rehabilitation, or acquisition project. In the rare situation where a structure combines both rehabilitation and new construction activities (e.g., adding units outside of the existing wall of the structure), the project would be designated as new construction. Based on the project designation, the match "liability" for the participating jurisdiction's program would be calculated.

Several commenters objected that a project involving several activities would have a matching contribution based on the rate for new construction. One suggested approach would be to prorate the various activities within the project. Another suggested approach would be to designate a project as rehabilitation as long as less than 50 percent of the gross residential square footage is newly constructed. The Department has decided not to accept either suggested approach.

Both approaches would present administrative problems. Moreover, most cases involving expansion beyond existing walls will be to add rooms, rather than new units. Adding new rooms is considered rehabilitation; adding new units is new construction. The Department has revised the regulation, to add to the regulation text, information found in the preamble to the proposed rule. The regulations have been revised to reflect the requirement that projects be designated at project set-up to determine matching contribution liability for activities carried out with respect to the project.

One commenter stated that project designation is not consistent with a matching contribution requirement based on the program; it appears to make the match project-based. The project designation is required to calculate a participating jurisdiction's matching contribution liability. The project designation will determine the required match percentage. The match liability for each fiscal year will be based on the HOME funds drawn from the Treasury account during the fiscal year for each project. The matching contribution actually made by a participating jurisdiction can vary by project, so long as the participating jurisdiction meets the overall match liability on funds drawn each fiscal year.

Another commenter supported a calculation of the match on a program (not project-by-project) basis and stated that the match is not really program-wide, since the HOME subsidy limit is based on the section 221(d)(3) maximum amount multiplied by 67 percent (See § 92.250). The Department disagrees with this comment. The match is a program match, and the actual percentage of matching contributions made by a participating jurisdiction will vary from project to project. The subsidy limit is an upper limit that will not affect most projects. (The Department expects that rehabilitation projects will typically be well below the subsidy limits.) However, even for a project with costs exceeding the HOME subsidy limit, the remainder of the costs need not be paid with matching funds (e.g., the costs could be paid from owner equity or market-rate financing), so long as the participating jurisdiction meets its overall matching contribution requirement during the fiscal year.

One commenter stated that HUD has flexibility to recognize the matching contribution at the time a binding commitment is made, the year the funds are disbursed, or to amortize the matching contribution over a number of years. The Department disagrees with this comment. A binding commitment does not constitute a contribution to the program. The Department will give credit for a matching contribution at the earliest point it can be determined that a contribution has been made. The Department will give each participating jurisdiction an administrative cost match credit equal to 7 percent of each allocation at the time each allocation is awarded. A cash contribution will be credited when matching funds are expended (for cash contributions or for infrastructure). Credit for donation of property will be given at the time property is donated (e.g., when title is transferred by the participating jurisdiction to a project owner that will rehabilitate or newly construct and

maintain the project as affordable housing). Credit for tax abatement will be given at the time the jurisdiction officially grants the tax abatement and the amount of the credit will be the present value of the tax abatement e.g., for abatement of property taxes over a specified number of years. Credit for the grant equivalent of a below-market interest rate loan will be given at the time of the loan closing.

One commenter stated that more guidance is needed regarding the timing of the match. The Department agrees and the regulation has been expanded on this point.

Several commenters objected to the requirement (in § 92.218(a)) that the matching contribution be made on a fiscal year basis. Several commenters requested that states be given six months beyond the federal fiscal year to commit match funds, because state fiscal years differ from the federal fiscal year and additional time is needed to identify and commit state resources for matching contributions. The requirement that the matching contribution requirement be met during the fiscal year is a statutory requirement (section 220(a) of the statute).

Several commenters suggested that HUD count toward the matching funds contributed to projects that do not receive HOME funds, but that serve people within HOME income limits. Section 220(a) of the statute requires matching contributions to be invested in projects assisted with HOME funds.

Section 92.219 Recognition of Matching Contribution

The Department received several comments concerning the automatic administrative cost match credit of seven percent to be given to participating jurisdictions. Several commenters expressed appreciation for the automatic 7 percent credit. One comment requested that the credit be increased to 15 percent. The 7 percent is statutory (Section 220(b)(2)). Another commenter thought that the 7 percent credit should be based on each project amount, not the HOME allocation amount. Section 220(b)(2) provides that the contribution for administrative expenses can be recognized "only up to an amount equal to 7 percent of the funds provided for investment under this title."

A commenter from California requested that HUD change the matching contribution requirement on mixed-income projects so that the minimum percent of dwelling units for low-income persons in a project is reduced from 50 to 49 percent, to accommodate a California constitution provision that requires proposed rental housing projects that will have 50 percent or more low-income tenants to be approved by community residents in a local election. The 50 percent minimum is a statutory requirement (Section 220(b)(1)(B)).

Section 92.220 Eligible Forms of Matching Contribution

Several commenters made general observations that the statutory language on eligible forms of contribution is illustrative, not exhaustive. The Department believes that the statutory language is intended to be an exclusive list. The Senate bill provided that the match could include "such other in-kind contributions as the Secretary may approve." This language would have given the Department the ability to recognize other forms of matching contributions; however, the Senate language was dropped in conference and is not included in the statute.

A few commenters observed that state constitutional provisions (which provide that the credit of the state shall not be given or loaned in aid to any individual, association or corporation) will preclude states and local governments from using tax or general revenues as a match.

The Department understands that some state constitutions may affect the form of match that can be provided. However, the match is a statutory requirement for the HOME Program.

The Department received many comments on the forms of the match. Many of the comments were identical.

Commenters requested HUD to recognize "sweat equity" as an eligible form of matching contribution. The Department believes that sweat equity cannot qualify. The Senate bill specifically recognized sweat equity, but the Senate language was not included in the approved legislation.

Many commenters stated that the eligible forms of match should include cash raised through debt issued by a jurisdiction, without regard to source of repayment, including repayments from rents or other proceeds from HOME financed projects. The statute requires the match to be a contribution. The test, therefore, is whether a proposed form of match is a true contribution. As long as the funds are permanently dedicated to the HOME Program (regardless of the form in which matching funds are provided to a particular project), it will be a contribution. If the matching funds loaned to a project must be repaid to other than the HOME account, it is not a true contribution.

Commenters asked that debt, both taxable and tax-exempt, be recognized as a match at its full face value. The commenters reasoned that tax-exempt debt will be a portion of a jurisdiction's private activity bond cap, which represents a commitment of local housing resources to HOME Program. The test is contribution, not commitment. If the funds raised by the debt are permanently contributed to the HOME Program, and funds other than HOME or matching funds (including repayments of HOME and matching funds loaned to a project) are used to retire the debt, it is a contribution.

Several commenters wanted HUD to clarify that proceeds from the sale of general obligation bonds (even if tax-exempt) may be used as match if sources other than HOME projects are used to repay the bonds. As stated above, if proceeds from the sale of bonds are permanently contributed, then they would qualify as matching funds.

Owner equity was another form of match suggested by many commenters. The Department believes that owner equity is not a contribution to the HOME Program; it is retained by the project owner. Moreover, it is not among the forms of match permitted by the statute.

Many commenters asked that the value of incentive zoning/density bonuses be recognized as meeting the matching funds requirement. The Department believes that any increase in property value created by incentive zoning is a benefit to the property owner (increases owner equity) and does not constitute a contribution to the HOME Program. This comment was not adopted.

The Department received many comments concerning loans. The proposed regulation recognized as a match the grant equivalent of a federally taxable, below-market interest rate loan that is not repaid to the participating jurisdiction's HOME Investment Trust Fund account. (Loans made to a project that are repayable to the HOME account are counted as matching funds for the face value amount of the loan.)

Commenters asked HUD to recognize the full value of loans, including Community Reinvestment Act loans, whether or not repaid to jurisdiction's HOME Investment Trust Fund account. A loan to a project that is not repaid to the participating jurisdiction's HOME account is not a permanent contribution to the HOME Program, and therefore, is not a match.

Commenters wanted to know whether loans to housing owners that are really grants should be counted as matching funds. They stated that the loan documents are really an enforcement device, and no repayment is expected. A

loan is only repayable if recipient fails to comply with programmatic requirements. The Department's position is that all loans, including forgivable loans and loans requiring repayment for noncompliance, are counted as a match, provided that any loan repayments are required to be made to the HOME Investment Trust Fund account.

One commenter thought that charitable deferred loans that require repayment to the charitable institution when the housing project is no longer affordable should count as matching funds. The Department disagrees. Loans that are not repayable to the HOME Investment Trust Fund account are not permanent contributions to the HOME Program.

The Department received a number of comments concerning the calculation of the grant equivalent of below-market interest rate loans not repayable to the participating jurisdiction's HOME account. One commenter suggested that if a local government issues tax-exempt bonds and then loans the proceeds to a HOME project at a lower interest rate, the amount of the match should be based on the present value of the difference between payments to be made on the bonds and payments to be received from the loan. The interest rate on the bonds should be used as the discount rate. The Department agrees, and has adopted this comment and eliminated the requirement that below-market rate loans must be federally taxable.

One commenter argued that the present value of a below-market interest rate loan that is not repayable to the HOME Program should be based on interest rate (not yield) forgone. The Department disagrees. A loan may have an interest rate that is below-market, but prepaid interest (paid as points) could mean that the loan is not actually below-market rate.

Several commenters wrote that the below-market interest rate benchmarks in the regulations are too low, and suggested other benchmarks. The suggestions ranged from a low of 175 basis points above the 10-year Treasury note rate to a high of 300 basis points above the 10-year Treasury note rate. Another suggestion was to use 250 basis points over the GNMA coupon rate, with provision for higher rates depending on loan to value ratios and debt service coverage. Another commenter suggested the use of the Applicable Federal Rate set monthly by the Treasury for short-term and long-term obligations, because this is the rate used for the low-income housing tax credit program. The Department has agreed to increase the benchmarks. The Department is using interest rates for 10-year Treasury notes for all types of projects, so that the rates are readily available to participating jurisdictions. (See § 92.220(a)(ii)(B).)

Several commenters stated that repayment of loans should not have to be made to the HOME Investment Trust Fund account if the matching funds come from (and will be repaid to) a state program fund for affordable housing—especially if the state program is more targeted than the HOME Program.

The Department has tried to accommodate these comments. The regulation has been revised to permit participating jurisdictions to establish a second local account for the HOME Investment Trust Fund within an existing state or local government affordable housing program, to enable the state or local government to use its existing affordable housing program as a match. This regulatory change will permit the state or local program funds to be used as matching funds and will assure that any repayment of the matching funds is subject to all HOME requirements. As with funds in the regular local HOME account, the repayments are not required to be matched and cannot be used to provide matching funds.

One commenter suggested that proceeds from the sale of loans made with HOME funds to Neighborhood Housing Services of America should be allowed to be counted as a match. Loans made with HOME funds can be sold in the secondary market. However, the proceeds are considered to be HOME funds and cannot be used as a source of matching funds.

A commenter thought that direct subsidies or subsidized advances received under the Federal Home Loan Bank System's Affordable Housing Program should be counted as matching funds. The advances are provided to the member banks, not to the HOME Program. The advances will enable the member banks to make below-market interest rate loans. The grant equivalent of the below-market interest rate loans can be counted as a match.

Another suggestion was that Neighborhood Reinvestment funds should count as a match. The commenter stated that these funds are used by local Neighborhood Housing Services organizations for both project-specific purposes and for local administrative cost. Neighborhood Reinvestment funds are not an eligible form of matching funds because they are federal funds and the statute requires that cash contribution to be from non-federal resources.

The Department received several comments concerning tax abatements. One commenter suggested that the regulations should specify the discount rate for determining the value of tax reductions or abatements and that the regulations use the Applicable Federal Rate set monthly by the Treasury for short-term and long-term obligations, because this is the rate that is used for the low-income housing tax credit program and it approximates the interest rate that would be earned on capital if it were invested to generate subsidies equivalent to those provided by below market rate loans. The discount rate for valuing property tax abatement should not reflect any premium for risk or for transaction costs. The Department agrees that the regulation should specify a discount rate for determining the value of tax reductions and abatements. The regulation (§ 92.219(a)(2)) has been revised to specify a discount rate based upon the Treasury security with a maturity closest to the number of years the taxes are waived, foregone, or deferred.

Another commenter stated that the value of property tax abatements should be based on either (1) post-improvement values if they are based on construction costs, or (2) the post-improvement value assuming highest and best use, if the income approach is used. The Department expects that the value of property tax abatements will be based on state or local law governing property tax assessment.

Many commenters requested that match credit be given for the full appraised value of RTC, FHA, VA or other foreclosed property, regardless of the amount paid by the jurisdiction. The proposed regulation specifically permits as matching funds the value of land and other real property, not acquired with federal resources, as appraised in conformance with established and generally recognized appraisal practice and procedures. The amount the participating jurisdiction pays for the property is not relevant in determining the value of property donated.

Another commenter suggested that the appraisal of property should be based on value at the highest and best use. This comment is consistent with the regulation, which requires that the appraisal be in conformance with established and generally recognized appraisal practice and procedures.

One commenter asked HUD, instead of requiring an appraisal of each building, to develop a vacant building index as a method of determining value and give the local government the option to do an appraisal on specific properties if it thinks the value of the property

exceeds the index. The commenter suggested the same type of index for determining the value of vacant land, e.g., using figures in Olcott's Book of Land Values. The Department has not adopted this suggestion.

One commenter asked that HUD recognize the value of vacant land and real property acquired with federal funds. The Department has not adopted this suggestion. Because the statute specifically prohibits cash contributions from federal resources, the Department believes that this prohibition cannot be circumvented by using federal resources to acquire property (or to pay for infrastructure) which is then contributed to the HOME Program.

The Department received a comment concerning investment in on-site and off-site infrastructure. The commenter stated that the infrastructure may be the first stage in the revitalization plan and may precede, by several years, significant housing development or rehabilitation. Therefore, the commenter suggested that the one-year time limit in the regulation be changed. The Department has not accepted this comment. The Department believes that the 12-month rule for completion of the infrastructure is reasonable, and is one indication that the infrastructure is directly required for the affordable housing assisted with HOME funds.

Several commenters argued that contributions should be required only for the period of affordability of the project, not permanently for the HOME Program. The Department disagrees with this comment. For a contribution to be a true contribution, it must be permanent.

The Department was asked to permit carryover of "excess" match. The Department agrees with this comment and will permit the carryover of match made in excess of the amount required, including automatically credited administrative cost amounts not needed to meet the match liability in a given fiscal year.

Commenters requested that HUD count a jurisdiction's contribution for reserves for replacement and project-based tenant assistance (operating reserves) as a match. The Department agrees, and the rule (§ 92.219(b)) has been amended to permit this use of matching funds and to clarify how matching funds may be used.

Several commenters suggested that supportive services should be recognized as a match, especially for special needs housing projects. The Department does not accept this suggestion.

Several comments were received concerning community housing development organizations and the matching funds requirements. One commenter asked that the administrative expenses of community housing development organizations should count as a match. The Department is already permitting the maximum statutory amount of matching funds for administrative expenses.

Commenters suggested that predevelopment contributions to community housing development organizations (seed money, project planning funds, and costs related to site identification and control), as well as capacity grants, should count as matching funds. Contributions may be spent by community housing development organizations on eligible HOME costs (see §§ 92.206 and 92.301) and count as matching funds. Grants to community housing development organizations to build capacity are not contributions to affordable housing assisted with HOME funds, and cannot be counted as match.

One commenter stated that interest earned on HOME funds before disbursement should not require a commensurate increase in matching funds. The Department agrees that any investment of HOME funds during the permissible 15 days before disbursements (see § 92.502(c)(2)) does not increase the matching amount required. The regulation calculates the match based on the amount of funds drawn from the participating jurisdiction's Treasury account of the HOME Investment Trust Fund. No regulatory change is needed.

The Department received several comments regarding program income. Several commenters wanted Community Development Block Grant (CDBG) program income to be eligible for matching purposes. The regulation permits cash contributions to be made from program income from a federal grant earned after the end of the award period if no federal requirements govern the disposition of the program income. The regulation reflects the Department's position that program income that is not subject to federal requirements is unrestricted money that a participating jurisdiction could provide as a cash match. The CDBG statute and regulations require CDBG program income to be used in accordance with all requirements applicable to CDBG grant funds, as long as the CDBG grantee is participating in the CDBG program. Therefore, this program income is not eligible as a cash match.

Similarly, commenters asked that Rental Rehabilitation Program loan repayments be eligible as match. The Rental Rehabilitation regulation imposes requirements on the use of program income until the grantee's program is completely closed out for all years. After that point, Rental Rehabilitation loan repayments or other program income could be eligible as a cash match.

One commenter stated that contributions from private foundations should be considered as matching funds. The regulation provides that a cash contribution may be made by the participating jurisdiction, private entities, or individuals. Thus, the regulation recognizes contributions from private foundations as a cash match.

The Department received other suggestions on forms of eligible matching funds. However, the commenters did not provide sufficient information for HUD to respond to the specific suggestions. HUD intends to provide notices or other guidelines on matching-funds issues.

Section 92.221 Match Credit

To provide additional clarification on the match, the Department has added a section that states when the participating jurisdiction will be credited for the various types of matching contributions.

Section 92.221 Reduction of the Match (Renumbered as § 92.222)

Several commenters asked for guidelines describing the basis for granting reduction of the match. One commenter wrote that HUD should identify economic and fiscal factors as grounds for reduction and a state should be given an automatic reduction (for 3 years) if the state meets fiscal or economic measures established by HUD. Another commenter asked HUD to develop reasonable and objective standards for determining which jurisdictions qualify for the reduction of match that recognize the acute fiscal distress facing most jurisdictions and publish the list; if a jurisdiction falls within the standards, its request for relief would be granted upon request.

The Department believes that, because the statute imposes the match requirement, any jurisdiction that decides to participate in the HOME Program should be prepared to meet this statutory obligation. The Department recognizes that some jurisdictions may be facing severe fiscal conditions; however, the amount of match required in the first year or two of the program should be minimal because it will take some time to move projects from commitment to the point of expenditure of HOME funds—the point at which the match liability is incurred. Moreover, the Department will credit the match at

the earliest possible point. Each participating jurisdiction will be credited with seven percent of its allocation amount at the time the funds are awarded for administrative expenses. Credit for tax abatement will be given at the time the jurisdiction grants the abatement, and credit for donation of property will be given at the time of transfer of the property.

Local participating jurisdictions that are experiencing both serious fiscal distress and lack of fiscal capacity (poverty and low per capita income) and that are planning activities that will result in heavy match liability in the first three years of the HOME Program may request a reduction of the match. The request for a reduction may be made in the program description and requested for the three-year period, if required.

Subpart F—Project Requirements

Section 92.250 Maximum Per-Unit Subsidy Amount

There were 29 comments on this section. Seven commenters felt that HUD should not establish any cost limits—that the amount of HOME funds should be established locally, based on the production costs of non-luxury housing in that market. Twelve commenters favored increasing the cost limits, and the following discussion will summarize the proposals that were offered. Eleven commenters objected to the deduction of tax credits from the amount of HOME subsidy, stating that this feature of the rule was without statutory basis. Three of those commenters suggested that it should be net proceeds which should be deducted from the subsidy amount, not gross. Two commenters mentioned that the deduction of the credit posed timing problems between the allocation of the credits and the approval of projects. One commenter suggested that HUD establish a national value for the credit to overcome this problem.

The proposals on increasing the subsidy amount included the following: Three commenters suggested project-by-project approvals by HUD up to 240 percent of the limits, and a blanket program-wide increase for high-cost areas up to 140 percent of the limits. Two commenters wanted the 67 percent multiplier increased to 75 percent; another to 80 percent; and two others to 100 percent.

Another pair of commenters suggested the allowance of additional HOME subsidy up to 40 percent of the additional cost above the cap, while another suggested that the difference between costs and the limit be equally shared by HOME and matching funds. Another commenter suggested an additional 10 percent to reflect development costs. The commenter also noted that the FHA limits have only been sporadically adjusted and suggested that, once pegged, they should be adjusted annually using a reliable cost index.

Another commenter suggested that the Total Development Cost Limits of the public housing program be used. A commenter felt that the subsidy limits should not be applied to the set-aside for Indian tribes. Another commenter asked that tenant assistance be outside the per-unit subsidy amount.

One commenter thought the subsidy scheme adequate for its purposes.

The Department believes that the per-unit subsidy proposal described in the rule provides a substantial amount of HOME funds for development, and the Department is not prepared to change it at this time. As clarification, the Department agrees that net proceeds (if the proceeds are syndicated, or, if they are not, the present value of the stream of tax credits) should be subtracted from the per-unit subsidy amount, and that the amount of tenant assistance is outside the maximum per-unit subsidy limit. For projects funded under the competitive award process for Indian tribes, Total Development Costs for public housing authorities will be applied as the per-unit subsidy limits.

Section 92.251 Property Standards

There were 14 comments on this section. Five commenters liked the rule language allowing first-time homebuyers two years to bring their units up to standard; one commenter suggested three years. One commenter suggested that HUD change the requirement of property standards to say that the unit will meet applicable codes, rehabilitation standards, or ordinances and, that, if they do not exist, then Housing Quality Standards (HQS) would apply. The commenter also raised the issue whether emergency repair programs would be precluded if all HQS violations were not corrected.

Another comment suggested that HUD should require all units to be maintained in accordance with applicable Housing Quality Standards by specifically citing HQS in § 92.504(c)(6).

In response to the comments, the Department has retained the provision in (§ 92.251) that allows first-time homebuyers to bring their properties up to standard within two years of purchase. The Department believes that the Section 8 Housing Quality Standards (HQS) are minimal standards and that HOME-assisted units should meet this standard initially and should continue to meet this standard for the period of affordability for rental housing.

In recognition of the impact of utility costs on housing affordability, HUD requested comments on the possible use of the Cost Effective Energy Conservation and Effectiveness Standards (CEECS) (24 CFR part 39) for property rehabilitation carried out with HOME funds. These standards were mandated by Congress and have been in use since 1979 for the Section 312 Property Rehabilitation Loan Program and several other HUD programs for assisting rehabilitation. They allow the owner to determine whether the cost of an energy improvement can be recovered through savings in fuel costs over a reasonable period of time.

Five commenters recommended that they be required for all property rehabilitation. Two commenters opposed requiring their use, and one of these recommended that their use be encouraged. Four other opposing commenters appear to have confused the CEECS with the energy efficiency standards to be promulgated for new construction under section 109 of NAHA. The Department does not propose applying new construction standards to property rehabilitation.

In light of these comments, the Department will require the use of the CEECS for all substantial rehabilitation (defined as $25,000 or more) assisted by HOME. It will encourage localities to address the need for energy efficiency standards for moderate property rehabilitation. Some will use the CEECS. Others may develop their own standards. The Department will study this experience and use it to decide whether to require, in the final rule, use of the CEECS for all or a portion of the remaining rehabilitation.

Section 92.252 Qualification as Affordable Housing: Rental

There were 48 public comments on this section. The majority of the comments focused on the length of the periods of affordability. One commenter suggested shorter terms than the proposed rule, nine commenters supported the periods that were proposed, 22 recommended longer terms, and two wanted affordability in perpetuity. Fifteen commenters requested that the Department make clear that the terms proposed were minimums which could be increased by the jurisdiction. One commenter wanted the terms established locally. Another commenter objected to the 20-year term for new construction and said the term should be based on the level of subsidy, as had the terms for rehabilitation.

Among those commenters suggesting longer terms, the recommendations included: The period required for tax credits, 30 years, if the project received more than $15,000 of HOME funds; 40 years (one commenter); and 50 years, or, if the project received under $5,000 of HOME funds, 10 years (8 commenters). Another commenter suggested a 99-year ground lease.

Five commenters expressed concern about very low-income tenants paying rents based upon 30 percent of gross income of a family whose income equals 60 percent of area median—which means that even those families that are right at the income limit will be paying more than 30 percent of income for rent. It was suggested that HUD use 30 percent of 50 percent.

On this section, three commenters suggested that HUD adopt the tax credit program approach, which establishes maximum rents based on unit size, but derived from an appropriate family size and income.

A comment suggested that utility allowances should be included in the rent structure. One commenter wanted clarification on monthly adjusted income in § 92.252(a)(2)(i) and gross income in § 92.252(a)(2)(ii).

Several commenters suggested eliminating the requirement that tenants over 80 percent of median pay not less than 30 percent of income. (This is a statutory requirement.) Commenters wanted their payment capped at Fair Market Rents (FMRs), modified to include state and local rent regulations or market rent established by locality. It was also suggested that units occupied by families having federal or state rental assistance should be excluded from rent limitations.

Other commenters had the following suggestions: increase the 20 percent of very low-income requirement to 40–60 percent; 20 percent very low-income is not feasible for small projects; lower 90 percent to 50 percent of rental units for families below 60 percent; allow jurisdictions to use HOME funds for administrative fees, or to charge owners a fee to do annual rent recertifications.

Another series of comments included the following: FMRs should be eliminated as a limit on rents, project-based assistance should be allowed with higher rent levels than specified, and higher rent levels should be allowed to ensure project feasibility.

The Department was asked to clarify that only HOME-assisted units must be occupied by low-income families, and to create program-wide waivers to the 100 percent low-income housing requirement (flexibility in the Rental Rehabilitation Program was cited).

Two different views were suggested in the following comments: allow rental units to be converted to tenant ownership after 15 years, and then apply the 15-year ownership requirements; no conversion to ownership should be allowed except to limited equity coops, and then use restrictions would begin again, as for the initial rental housing.

The following recommendations were offered by one commenter: HUD should aggressively pursue an earmark of Section 8 rental assistance for HOME projects to ensure very low-income participation; the rule should be revised to prohibit any discrimination against applicants based upon the amount or source of income; and HUD should establish binding useful life restrictions on affordability and require that owners cannot benefit financially from violation of these provisions, i.e. any proceeds in excess of the project's bona fide debt must be repaid to a local trust fund, in addition to the repayment of any HOME Investment.

The Department has decided to maintain the periods of affordability in the proposed rule; however, the final rule has been revised to clarify that the periods are minimum terms which may be extended at state or local discretion.

The Department agrees with the recommendation that it must establish maximum rents based on unit size derived from an appropriate family size and income, and has adopted such an approach in the final rule.

With regard to changing the percent of low-income or very-low income families expected to reside at the established rent levels, the regulation mirrors the statutory requirements. The statute also requires that families who no longer qualify as low-income must pay 30 percent of the family's adjusted monthly income for rent.

The Department has revised the rule to lower the rent level for very low-income families from 30 percent of 60 percent of area median to 30 percent of 50 percent of area median. In addition, the regulation has been revised to cover utilities in the rent structure.

Section 92.253 Tenant Participation Plan

There were eight comments on this section. Three commenters suggested that CHDOs should be able to give preference to neighborhood residents and interview prospective tenants to see if they will be good tenants. One comment recommended that the requirement for the owner to maintain a written waiting list be eliminated. The commenter believed that the requirement would be burdensome, and that following an approved affirmative marketing strategy would serve a similar purpose to the waiting list.

On giving preference to neighborhood residents, we assume that mostly neighborhood residents will apply. However, a specific preference to neighborhood residents is not possible because the federal preferences must be applied.

On interviewing prospective tenants to see if they will be good tenants, it is expected that owners do this as good business practice.

The comment to eliminate waiting lists cannot be adopted. Use of a waiting list is required by section 225(d) of NAHA.

The commenter wanted more tenant protection in case of termination of tenancy—to be locally adopted. The Department requires the minimum set forth in the regulations. If localities want more tenant protections, they are free to adopt them as long as they do not conflict with these regulations.

Several commenters wanted model leases. HUD believes that because of the wide variations in state and local law it is better to state our requirements and prohibitions and allow localities and owners to use their own leases.

One commenter suggested the two-year lease term under statute should be extendable if a jurisdiction puts in other funds. This is already the case. They went on to say that the tenant could only be evicted for cause. This also is already the case.

One commenter said a one-year lease does not work for special needs. The regulation as written provides flexibility in this regard.

One commenter suggested locally designed tenant assistance programs are not sufficiently defined in the regulation and suggested that HUD require that either a voucher or a certificate model be followed. HUD has decided to give jurisdictions flexibility in this regard.

Another commenter said that tenants should not be denied admission to HOME projects because of bad credit or rent payment problems. Criteria for admission should be related to the ability to pay HOME subsidized rents, not market rate rents, but CHDOs should interview prospective tenants to see whether they will be good tenants.

One commenter said there was no basis for HUD to establish a minimum rent standard under tenant assistance. The rent should be based on income. HUD disagrees and believes that tenants have a responsibility to pay some portion of income towards housing costs. If there is zero income, as may be

the case with homeless persons, then the minimum contribution is also zero.

One comment pointed out that HUD neglected to include utility allowances in the definition of reasonable rent. The regulation has been revised to be more specific in this regard. One commenter suggested that a tenant participation plan (such as that required for CHDOs) should be required of all owners. HUD does not wish to impose additional requirements where they are not required.

Section 92.254 Qualification as Affordable Housing: Homeownership

The Department received 46 comments on this section.

Purchase With or Without Rehabilitation—Period to Ensure Affordability

Five comments supported the proposed regulation regarding the assurance that the housing will remain affordable for a long period; these commenters did not suggest changing the proposed rule. Five others proposed that the period to ensure that housing remains affordable to low-income buyers be made longer.Two of them suggested that the period be the longer of 50 years or the "remaining useful life," while two other commenters suggested it be "perpetual" or for a very long time (50 years). The other commenter proposed that the term be increased to equal the term offered by FHA insured loans.

There were four other commenters who believed that the period (20 years for newly constructed housing or 15 years for other housing) required for low-income affordability was too long; two commenters suggested that the period should be only five years. Two of the commenters did not offer a specific period, but related the period to the period it takes to recover the participating jurisdiction's HOME investment.

Two other commenters, while not commenting on the actual periods in the proposed rule, suggested that the residence requirement apply only to the initial homeowner. Another commenter indicated that the state courts had found that requiring a recipient to remain for a specific period is unenforceable if Community Development Block Grant funds had been used to assist in the acquisition of the unit.

The Department has decided, given the balanced responses it received to the provisions of this section, not to extend or shorten the terms of affordability for homeownership. The rule has not been revised. The period of affordability is not tied to the homeowner, but rather to the unit. The period of affordability does not require the homeowner to remain in the property. However, the terms of affordability (20 years for new construction and 15 years for rehabilitated housing) are minimums, and participating jurisdictions have authority to lengthen these terms if they desire.

Fair Return on Investment (Equity) and Return of HOME Investment to the Participating Jurisdiction

The seven comments about the amount of equity that the initial homeowner could retain varied between permitting more equity to limiting the amount of it. Two of the latter comments proposed that a lien on the property in the amount of assistance would provide the locality with its return while still permitting a fair return to the original buyer.

Five commenters offered reasons for providing the initial homeowners more of the equity, such as returning to the homebuyer inflation-adjusted costs of buying, improving, and financing the acquisition of the property; or, permitting the homeowner to retain more of the equity in areas where successor homeowners are difficult to find.

Two of the commenters stated that the proposed rule is a disincentive for low-income persons who "want to participate in the free market with a minimum of restrictions." Another stated that homebuyers should not be made "second class homeowners" who can only sell to other low-income buyers.

The comments about the return of the initial homebuyer's equity are also related to the participating jurisdiction's recovering its initial investment. Two commenters suggest that any gain or equity increase be apportioned between the HOME fund and the homebuyer in proportion to their contributions. One of these commenters suggested that the public subsidy should not be forgiven over time in advance of the expiration of the final use restriction that is adopted.

One of the comments questioned whether the public should pay twice for the same project, once when it is built and once when the binding commitments expire.

One of the commenters proposed that if the subsequent purchaser is a low-income person, then the amount of the forgivable loan could be passed on to the second owner; and if the next purchaser was not low-income, the forgivable loan amount would be paid back to the jurisdiction in full. Another two commenters expressed the view that determining the amount of the related increase to the HOME assistance would be difficult, particularly over the period of time in the proposed rule.

The statute and the proposed rule provided participating jurisdictions maximum flexibility to develop guidelines for determining the amount of equity returned to the initial homebuyer upon sale of the HOME assisted house. The Department sees no reason to restrict that flexibility beyond that required by the statute.

Resale Price and Appraised Value

There were eight comments on the method or means to establish the value and price at the time of resale. Four of the comments supported giving the locality more latitude to set resale terms other than just the price. Three of the commenters suggested that each jurisdiction could control affordable housing provisions better than the federal government.

The Department agrees that the regulation need not restrict the resale price to ensure continued affordability. The regulation has been revised to provide for affordability in terms of monthly housing payments.

Two of the commenters suggested that the purchase price at resale be governed by the same requirements as are set out in section 215(b)(1) of NAHA. This suggestion does not meet the test in the statute.

Monitoring the Resale Provisions and Administrative Costs

There were five comments to the effect that the rule did not mention administrative costs or long-term monitoring responsibilities. These comments stated that this section assumed that either the locality would do the monitoring or, additionally, that lenders may have to enforce the provisions. All five were concerned that there is no provision for administrative costs in the proposed rule for those responsibilities.

Although the Department is sympathetic to this concern, the payment of administrative costs with HOME funds is not permitted by the statute.

Participation by Private Lenders, FNMA and Community Land Trusts

There were seven comments about broadening the involvement of private lenders, FNMA, and community land trusts. Notably, most of these commenters supported the proposed rule; however, two suggested that HUD should permit increased participation in

the development of this rule from the providers of funding for projects and properties for low-income persons and families.

The Department intends to explore cooperation with FNMA and other organizations with sources of funds for affordable housing.

Two commenters suggested using the model of community land trusts (CLT). That is, the CLT purchases the land and sells only the building (improvement) to the eligible family. One of the commenters stated that this model involves a community-based nonprofit and should result in perpetual affordability.

The Department has been in contact with community land trust organizations regarding their efforts to maintain the long-term affordability of assisted housing and will develop information for participating jurisdictions and nonprofits in the future.

One responder did not comment, but questioned at what future time the resale requirements would terminate for a first-time homebuyer.

The resale requirements apply to all sales of the property during the period of affordability.

Section 92.255 Mixed-Income Project

The two commenters on this section objected to the limitation that HOME funds be spent only on units occupied by low-income families, suggesting instead that as long as a project had a majority of low-income tenants, HOME funds could be spent on the entire projects. Concern was voiced about the concentration of low-income families.

The statute requires that HOME funds be spent only on units occupied by low-income families.

Section 92.256 Mixed-Use Project

There were five commenters on this section, all of whom objected to the 51 percent requirement for residential space in a building. Two commenters also objected to requiring that each building in a project contain residential living space.

The intent of the statute is to create affordable housing and, in keeping with this purpose, the Department has retained both requirements.

Section 92.257 Religious Organizations

There were three commenters on this section. One commenter was concerned that YMCAs or other such nonprofits would be excluded from receiving HOME funds. Two other commenters voiced a similar concern about the current wording of the rule, which seemed to preclude acquisition or leasing of property from religious organizations. It was recommended that clarification be provided to indicate that property purchased or leased from religious organizations by secular organizations is eligible for HOME funding.

The Department has made the clarification with regard to the purchase of property from a religious organization.

The Department has determined that YMCAs, YWCAs, YMHAs, and YWHAs are not primarily religious organizations and, therefore, are not prohibited from receiving HOME funds for eligible activities.

Section 92.258 Limitation of Use of HOME Funds with FHA Insurance

All sixteen commenters indicated that this provision should be eliminated. All believed that tying the FHA mortgage term to the affordability term did not make sense and would have the opposite effect on HOME intent, by increasing monthly costs of the mortgage and making units less affordable. Other commenters claimed that the practical intent of the rule was to eliminate the use of FHA mortgage insurance with HOME funds which was not, the commenters said, the Congressional intent. It was recommended that this provision be stricken and that HOME projects be underwritten for FHA insurance on their merits alone.

The commenters read this provision as limiting the term of FHA mortgages to the applicable minimum affordability periods set out in §§ 92.252(a)(5) and 92.254(a)(4)(ii). Under this reading, for example, an FHA mortgage on a rental project that was rehabilitated with under $15,000 per unit of HOME funds would be limited to a term of five years. The proposed rule provision, however, would have limited the FHA mortgage to whatever period of affordability participating jurisdiction required for the project, not to the minimum affordability period. The Department has revised § 92.258 (and has added a comparable provision at § 92.624 for the Indian tribe component of the Program) to restate the requirement in a way that avoids the impression that an FHA mortgage is limited to the applicable minimum affordability period. This section now provides that the affordability period for the project must be equal to the term of the FHA mortgage.

Subpart G—Community Housing Development Organizations

The Department received a total of 39 comments on §§ 92.300, 92.301, and 92.302.

Section 92.300 Set-Aside for Community Housing Development Organizations

Five commenters suggested that the regulations provide for a waiver of the 18-month period within which HOME funds must be reserved for nonprofit projects, since 18 months may not be enough time for those communities that do not currently have CHDOs. One commenter suggested that a commensurate level of administrative funds should be provided out of the 15 percent set-aside to these organizations, to facilitate capacity development.

The 18-month period is statutory and cannot be increased in the regulations. The statute does not permit the use of the 15 percent set-aside for administrative costs.

Four commenters indicated that the requirement that a CHDO that owns a project in partnership must be the managing general partner is too restrictive. New York, for example, prohibits nonprofit corporations from acting in the capacity of general partner in business partnerships, and therefore, nonprofit organizations in New York would be unable to use low-income tax credits in conjunction with the set-aside of HOME funds. Clarifying language was recommended to identify "general partner" as the "1 percent interest" in the limited partnership arrangement. It was also suggested that the CHDO definition be broadened to include a wholly-owned, for-profit subsidiary of the CHDO.

In response, the Department wants to ensure that the CHDO controls the project, irrespective of the title it holds or the percentage of ownership it possesses. Therefore § 92.300 has been revised to state that if a CHDO or its wholly owned, for-profit subsidiary owns the project in partnership, the CHDO or the subsidiary must be the managing general partner. The CHDO could establish a wholly owned subsidiary to own the project along with limited partners, but the CHDO must control the project in order for it to qualify for investment of HOME funds under the 15 percent set-aside. A wholly owned for-profit subsidiary of a CHDO does not qualify as a CHDO under the statutory definition, and the regulation has not been revised on this point.

One commenter stated that the regulations are not clear whether a local match is required for the 15 percent set-aside or, if required, is it based upon how the CHDO uses the set-aside, i.e., for new construction or for rehabilitation.

In response, matching contributions are required for HOME funds that are drawn down by a participating jurisdiction, including funds invested in CHDO projects. The participating jurisdiction is responsible for meeting the matching requirements and the match, while calculated on a project basis, is not required to be made on a project-by-project basis, but rather on a program-wide basis.

Section 92.301 Project-Specific Assistance to Community Housing Development Organizations

The statute permits a participating jurisdiction to use 10 percent of its 15 percent CHDO set-aside for pre-development loans. One commenter recommended that the 10 percent be a minimum standard, with jurisdictions being able to reserve up to 20 percent at their discretion. Another commenter encouraged the use of "grants" instead of "loans" to facilitate sound project feasibility studies and engagement of a development team. Another commenter asserted that state programs would benefit from being able to use a portion of the 10 percent for technical assistance and capacity building activities with CHDOs related to HOME activities.

In response, it should be noted that the statute provides that "amounts not to exceed 10 percent" may be used for project-specific loans to CHDOs. In addition, participating jurisdictions may waive repayment of the loans if there are impediments beyond the control of the CHDO. Finally, the rule is very clear that these loans are for project-specific activities, and are not to be loaned to CHDOs for general technical assistance and capacity building.

One commenter recommended that the role of CHDOs as a developer, sponsor, or owner be further defined in order to ensure that their participation in a project is significant and long-term. The concern is that a CHDO could be used to obtain reserved funds by acting as a "sponsor" or "developer" without any substantial involvement in the project. The jurisdictions, it was suggested, should be allowed to make a determination that a CHDO obtaining reserved funds is in fact acting in such a substantial role.

The Department believes that further definition is not required because the requirements contained in the definition of a CHDO virtually mandate long-term association with funded projects. Further, the regulation makes clear that the HOME funds invested in projects affiliated with CHDOs must be awarded to the CHDOs thereby, requiring their active participation.

One commenter noted that the proposed rule does not state specifically enough the circumstances under which seed loans can be waived.

The Department assumed that participating jurisdictions would husband well their HOME funds invested in CHDO projects and that they did not require any further guidance. Statements of specific circumstances would serve only to restrict participating jurisdictions unnecessarily.

Section 93.302 Housing Education and Organizational Support

The proposed rule states that an organization, in order to contract with HUD to provide housing and organizational support, must serve more than one community. One commenter indicated that there are organizations that handle a number of communities in the same city. Therefore, the definition of community should be expanded to include "neighborhoods."

The expansion of the definition of "community" contained in the CHDO criteria addressed this comment.

One commenter recommended that HUD consult with states in the selection of nonprofit intermediary organizations, in order to take advantage of the states' extensive experience with these issues. The Department intends to take such action.

Section 234(b) of NAHA provides that a CHDO may not receive assistance under the HOME Program in an amount that, together with other federal assistance, provides more than 50 percent of an organization's total operating budget in a given year. Section 92.302(d)(1) implements this limitation. HUD received nine comments on this issue. Each commenter stated that the 50 percent limitation restricts participation by many CHDO's particularly by new or small CHDOs. Commenters suggested: Limiting the 50 percent restriction only to funds under section 233 of the statute; waiving the restriction for the first two years of a CHDO's existence; raising the limitation to 75 percent of operating budget for small CHDOs ($500,000 annually and under); and applying the limit only to operating expenses for housing development activities or defining "operating funds" to exclude project and program-related funds.

Section 92.302(d)(1) applies the limitation only to HOME funds received by a CHDO for organizational support and for housing education, the forms of HOME assistance that may be a part of a CHDO's operating budget. The Department believes that its interpretation of the limitation in the statute provides flexibility in its application as much as possible and still remains true to the letter and intent of the statutory limitation. The Department's interpretation permits the largest number of CHDOs to qualify for HOME funds.

Three commenters recognized the heavy use of CDBG funds by CHDOs and recommended that CDBG funds should not be considered federal funds for the purpose of calculating this restriction.

The Department construes "other federal assistance" to include federal grants, such as CDBG, that are awarded to states and local governments and subgranted to community housing development organizations. The regulation has not been revised.

Section 92.303—Tenant Participation Plan

HUD received four comments on this section. The first commenter stated that HUD should define standards and procedures that would constitute adequate and appropriate tenant participation in management decisions in such a way as to avoid diminishing control of organizations acting as general partners.

The rule gives great flexibility to participating jurisdictions to approve a broad range of tenant participation plans. Some may give significant powers to the tenants, while others may provide them an advisory role only. The Department did not want to be unduly prescriptive in this area, especially in light of the variations in tenant law throughout the country.

A second commenter expressed resistance to tenants' involvement in management decisions and stated that tenant plans for special needs populations are not practical or appropriate.

The Department agrees that the appropriate amount of tenant involvement may vary, and has permitted wide flexibility within the letter of the Act.

Another commenter stated that HUD should give guidance to participating jurisdictions on their discretionary power to evaluate a CHDO's tenant participation plan, particularly on frequency of submission, i.e., annual submission.

The Department chooses not to be overly prescriptive regarding these issues.

A final commenter recommended that the requirement for a tenant participation plan is a mechanism for substantive community involvement without HUD dictating the composition of the CHDO's governing board.

The Department disagrees that a plan for participation of tenants is a mechanism for community involvement. No change has been made to the rule.

Subpart H—Other Federal Requirements

Section 92.351 Affirmative Marketing

Two comments were received. One commenter suggested that affirmative marketing should apply when common ownership of assisted units within the jurisdiction is five or more, rather than to projects with five or more assisted units.

One commenter suggested that a formal, regulatory connection be made requiring participating jurisdictions and PHAs to coordinate programs.

No change has been made in this section.

Section 92.352 Environmental Review

Ten comments were received.

Two commenters stated their belief that the cost of performing environmental reviews should be passed on to the project developer, and another commenter requested clarification whether this would be allowable. Commenters also asked for clarification whether states could pass the environmental review responsibilities onto the state recipients and subrecipients.

One commenter asked whether an environmental review must be performed on each individual dwelling unit of a scattered-site project.

One commenter suggested that, rather than having to perform a review, a jurisdiction be allowed to rely upon an indemnification against losses as a result of environmental hazards, from the project owners.

One commenter suggested that environmental reviews be performed by HUD staff, as is now the case in some other HUD programs.

One commenter expressed concern that environmental review requirements will add to administrative costs and burden because additional staff will be needed to carry out these requirements.

The requirement to perform an environmental review is statutory, although certain activities that do not have the potential for significant physical impact and do not trigger environmental laws are exempt from review under 24 CFR part 58. The statute provides for assumption of environmental review responsibilities by participating jurisdictions, but not by other recipients or subrecipients, such as Indian tribes. The cost of reviews for which participating jurisdictions are responsible could be passed on to developers, but these costs would nevertheless remain administrative costs that are not eligible costs under the HOME Program.

The Department has not made any change in this section although it has prepared a technical amendment to the statute that would allow state recipients to assume responsibility for the environmental review.

Section 92.353 Displacement, Relocation and Acquisition Residential Antidisplacement and Relocation Assistance Plan

In the proposed rule preamble, the Department invited public comment on whether it should, by regulation, extend the requirements of section 104(d) of the Housing and Community Development Act of 1974 to the HOME Program. Section 104(d) requires grantees to have a Residential Antidisplacement and Relocation Assistance Plan (Plan) that requires the replacement of low- and moderate-income dwelling units that are demolished or converted to another use in connection with a Community Development Block Grant (CDBG) activity. It also requires the provision of certain relocation assistance to lower-income persons displaced by such conversion or by any CDBG-assisted demolition.

Five commenters supported the imposition by regulation of this requirement to cover activities carried out in connection with HOME-assisted activities. Two commenters specified that the Plan should be required only if those displaced by a HOME Program are given preference for Section 8 assistance and Section 8 setasides are provided for this purpose. Nine commenters were opposed to imposing the requirement.

Those supporting imposition of the requirement contended that HOME-assisted projects should not reduce the already-limited supply of low- and moderate-income housing available to lower-income persons.

Those commenters who opposed the adoption of the requirement contended that if Congress had wanted these requirements to apply to the HOME Program, it would have included them in the statute. One commenter noted that since HOME activities increase the supply of affordable housing, no need exists for such a requirement. Another commenter observed that the requirement would increase administrative costs in a program that provides no administrative funds. Several others expressed a general concern that imposition of the requirement would increase costs. Three commenters suggested that changes in the Section 8 rules should be made to provide persons displaced by a HOME Program with Section 8 assistance before other preference families. This comment on Section 8 rules was outside the scope of this proposed rulemaking.

The Department has decided not to extend by regulation the Plan requirement to the HOME Program, since the requirement is not included in the Act. However, the HOME projects of many participating jurisdictions are likely to be subject to the Plan requirements. Section 92.353 of this rule has been revised to reflect how that could occur.

Participating jurisdictions that choose to use CDBG funds on a HOME project to pay for such project-specific administrative costs as work write-ups, inspections, and loan originations will make such projects subject to CDBG requirements, including the Plan requirement. Thus, while the use of HOME funds will not trigger Plan requirements, use of CDBG funds for a HOME project may. Since HOME funds may not be used for administrative costs, the Department expects that there will be many instances where participating jurisdictions will use CDBG funds for project-specific administrative costs, thereby making many HOME projects subject to the Plan and other CDBG requirements.

Section 92.354 Labor

Five comments were received concerning the labor requirements.

Two commenters suggested that the threshold at which Davis-Bacon requirements become applicable be raised from 12 or more units to 40 or more units. The reason for this, the commenters said, was that cost and market constraints will otherwise curtail the development of smaller projects.

Two comments suggest that the threshold of 12 or more units be applied to "buildings with 12 or more units" rather than the more restrictive "contract (project) with 12 or more units," which would affect the development of scattered-site projects.

One comment asked whether the Davis-Bacon Act would apply to "homeownership programs of less than 12 units."

The application of Davis-Bacon requirements to contracts for the construction of 12 or more units of HOME-assisted affordable housing is a statutory requirement. The Department has implemented the statute as written and has not made any changes in this section.

Section 92.355 Lead Based Paint

Three comments were received.

Two commenters were concerned about the cost of lead based paint removal, with one suggesting that the cost be explicitly identified as eligible under § 92.206, and the other suggesting that a specific HOME grant program be established to fund lead based paint removal.

One commenter suggested that the "HUD Guide to Lead Paint Abatement at Public and Indian Housing" guidelines be adopted for the HOME Program.

Lead based abatement is specifically listed as an eligible cost under § 92.206. The Department will soon be issuing a new, comprehensive rule for lead-based paint which would apply to the HOME Program. It will incorporate, in part, provisions in the "Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing Programs" (see 55 FR 14555, April 18, 1990 and 55 FR 39874, September 28, 1990.)

Section 92.356 Conflict of Interest

Two comments were received.

One commenter suggests that an exemption to this section be included for Indian Tribes, similar to the Indian CDBG program. The Department has revised the regulations to set forth a separate conflict of interest provision for Indian tribes.

The second commenter noted and agreed with a difference in the definition of "conflict of interest" between the HOME and the CDBG regulations; that is, the HOME rule leaves out the word "personal" used in the CDBG wording of "personal and financial interest or benefit."

Section 92.358 Flood Insurance

The one comment received was concerned that an increased administrative burden will result from having to monitor the maintenance of flood insurance.

No change has been made in this section.

Subpart J—Reallocations

Section 92.451 Reallocation

A comment asserted that a local jurisdiction should be able to affirmatively join with a state applicant. The commenter stated that the proposed regulations have a procedure in which a local jurisdiction's funds revert to a participating state if the jurisdiction fails to participate. The commenter believes that state and local governments should be able to submit a single application, without the local jurisdiction first failing to participate. The Department has not modified the rule based on this comment. This section is intended to cover the reallocations of funds that become available because a jurisdiction either fails to become a participating jurisdiction or has that designation revoked. Sections 216(6) and 216(8) of NAHA expressly provide for reallocations under these circumstances.

Section 92.452 Reallocation of CHDO Set-Aside

A comment was received stating that the first reallocation of HOME funds should always be within the state or participating jurisdiction. This comment was not adopted. The manner in which funds are reallocated is statutory.

Section 92.453 Criteria for Competitive Reallocation

Five comments strongly objected to the threshold factor at § 92.453(b)(2)(i), which states that a jurisdiction will only be eligible to receive HOME funds through the competitive reallocation process if "the jurisdiction is implementing, or has plans to implement, a strategy to remove or ameliorate negative effects of public policies which raise the cost of housing or constrain incentives to develop, maintain, or improve affordable housing, or demonstrates the absence of these policies." Some of the commenters stated that they found this threshold factor to be in conflict with the statute and Congressional intent.

The proposed rule on reallocation closely mirrored the statutory requirements in terms of which entities were eligible to receive reallocated funds. With reference to the criteria for reallocation, the Department examined the statute and found that it was permissible to establish a threshold factor relating to whether a jurisdiction is implementing, or planning to implement, a strategy to remove or ameliorate negative effects of public policy which raise the costs of housing or constrain incentives to develop, maintain, or improve affordable housing.

Subpart K—Program Administration

The Department received one general comment that the administrative requirements in subpart K impose burdensome and duplicative requirements on states, and that the requirements exceed the statute. However, comments concerning specific regulatory provisions frequently did not recognize that regulatory requirements arose directly out of requirements in the HOME legislation.

Section 92.500 HOME Investment Trust Fund

Several commenters had concerns about requiring repayment of the matching funds into the local account of the HOME Investment Trust Fund. One commenter wanted HUD to clarify whether matching contributions and any payment of interest or other returns on matching contributions will be subsequently considered local matching funds. Another commenter stated that the regulatory requirement for two HOME accounts makes it possible to avoid match requirements for repayment of HOME funds and interest on HOME investments, and questioned whether that was permitted by the statute. Another commenter wrote that the regulation should not require the repayment of the match to be deposited in the HOME Investment Trust Fund.

Section 218 requires HUD to establish a HOME Investment Trust Fund account for each participating jurisdiction, and section 219(c) permits the establishment of a HOME Investment Trust Fund account outside of the federal government. The regulation provides for the establishment of two accounts (U.S. Treasury account and local account), and together the accounts are the HOME Investment Trust Fund and may only be used for affordable housing in accordance with all HOME program requirements. Section 220 of the statute requires a participating jurisdiction to match funds drawn from its HOME Investment Trust Fund. Instead of requiring all funds drawn from the HOME Investment Trust Fund (two accounts) to be matched, the regulation requires repayments of HOME funds and matching funds and any interest or other return of investment of the funds to be deposited in the local account. Because repayment of match funds must be paid into the local account, in effect, the HOME funds in the local account are permanently matched and therefore funds drawn from the local account do not have to be matched again. This arrangement also permits a loan by a participating jurisdiction to a project to be counted as a match (permanent contribution to the HOME Program) because repayments are deposited into the local account and used for additional HOME projects.

As noted above in the discussion of the matching fund requirements, the regulation has been revised to permit a second local account under certain circumstances.

The Department received several comments concerning the deadlines for commitment of HOME funds and for

expenditure of HOME funds. Commenters requested that the regulation provide for extensions to the 24-month commitment and five-year expenditure deadlines, an additional 12 months and 24 months respectively, upon application to the local HUD field office. Another commenter suggested that states should get three years in which to commit all HOME funds before recapture provisions take effect.

Section 218(g) of the statute provides that (except in the case of rental housing production set-aside funds) if HOME funds available to a participating jurisdiction are not placed under binding commitments to affordable housing within 24 months, the participating jurisdiction's right to draw the money from the HOME Investment Trust Fund shall expire and HUD must recapture and reallocate the funds. Therefore, the Department has no discretion to extend the time period for commitment of the funds.

The Department believes that the five-year period for expenditure of the funds is a reasonable amount of time. The Department expects the funds to be used expeditiously for affordable housing. In addition, 31 U.S.C. 1552, as amended by Public Law 101–510, approved November 5, 1990, generally provides that federal funds must be expended within five years after the appropriation expires. The regulatory requirement to spend the HOME funds within five years will meet this statutory requirement. A waiver of the regulatory requirement may be sought, in a particular case, for good cause, to extend the time to up to that permitted by Public Law 101–510.

Section 92.502 Cash and Management Information System; Disbursement of HOME Funds

The Department received a number of comments concerning the Cash and Management Information System (C/MI system). Some commenters supported the C/MI system. Others stated that the C/MI system is adequate, especially because state recipients are allowed access to the system.

Others wrote that the C/MI system should be revised to accommodate HOME. Although the system works for the Rental Rehabilitation Program, HOME is a more complex program. One commenter suggested that HOME funds should be handled in a manner similar to CDBG grants, whereby local governments make certifications to receive the grant and are held accountable for the use of the funds at the time of annual monitoring. Another commenter thought that the C/MI system imposes administrative burdens on participating jurisdictions—too much paperwork and forms. A couple of commenters were particularly concerned about the project deadlines now used for the Rental Rehabilitation Program.

The basic C/MI system in the regulation has not been revised. Section 218(h) of the statute requires HUD to keep each participating jurisdiction informed of the status of its HOME Investment Trust Fund, including the status of amounts under various stages of commitment. Therefore, the Department must have information on commitments of HOME funds; the system used for the CDBG program will not satisfy the statutory requirement.

The Department has accepted comments concerning the project deadlines. The definition of "commitment" has been revised to permit construction to start within six months (instead of 90 days) after the agreement has been signed between the participating jurisdiction and the project owner. In addition, the automatic cancellation of the project in the C/MI system will not occur unless the project has not had an initial disbursement within one year (instead of six months) of project set-up.

One commenter suggested that HOME fund draws should be made by the telephone, the same as for CDBG. The Department will use the Voice Response System (the system used for the CDBG and Rental Rehabilitation programs) for the HOME Program, so that funds may be drawn down pursuant to a telephone call.

Section 92.504 Participating Jurisdiction Responsibilities; Written Agreements; Monitoring

One commenter suggested that the regulation should clarify that the local government subrecipient, designated by the state to administer all or a portion of the HOME funds, may take on the responsibility for executing written agreements with project owners, at the state's discretion. The Department agrees that the state may permit or require its local governments to perform these functions. The regulation at § 92.201(b)(3) has been modified to make clear that, while the state has the ultimate responsibility, the state may require the local governments receiving HOME funds from the state to perform program functions.

Section 92.505 Applicability of Uniform Administrative Requirements

One commenter complained that the requirement for annual onsite monitoring is excessive; adequate monitoring can be performed through review of records, reports, and audits. The Department cannot accommodate this requested change. The regulatory requirement is based upon section 226(b) of the statute, which requires annual on-site monitoring of HOME rental affordable housing.

Another commenter stated that annual review by the participating jurisdiction of contractors and subrecipients exceeds the statute. The Department believes this requirement is reasonable and is consistent with the requirements in 24 CFR part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments.

Two commenters suggested that the regulation permit the local governments receiving funds from the state to do the annual review of owners of rental housing, with oversight by the state. The Department agrees with this comment and the regulation at § 92.201(b)(3) has been modified to permit this.

The Department was asked by a commenter to establish annual compliance monitoring guidelines (handbook, forms, technical assistance) to assist participating jurisdictions in their monitoring responsibility. The Department intends to establish monitoring guidelines.

Three commenters wrote about special procedures for monitoring that is permitted by section 226(c) of the statute. One commenter stated that the regulation does not provide for special streamlined procedures for small-scale or scattered site housing projects, and that the regulation should have special procedures to accommodate state development of this type of projects. The Department believes that this subject matter is covered in proposed § 92.504(d)(1), and it remains unchanged in this final rule.

Another commenter thought that the streamlined monitoring procedure in the regulation should give more relief; site visits should only be required for a random sample of all projects each year (10–20%); on-site visits should not be required for projects with less than 20 units. The third commenter suggested that one-to-four unit properties should be inspected every five years and multifamily projects every two years. These suggestions have not been adopted because they go beyond what is statutorily permissible. Streamlined procedures are only permitted for small-scale or scattered housing; all other rental housing must be inspected on-site annually. The regulation does permit on-site inspection of rental housing containing one-to-four units every two years, instead of every year.

The Department received a comment that the written agreement should state, in accordance with section 226(a) of the statute, that the agreement may be enforced by the jurisdiction or by intended beneficiaries. This comment is correct and the regulation has been modified to reflect it.

Another commenter stated that repayment of HOME funds should not be the sole remedy for housing that fails to meet affordability requirements, and that the regulation should make clear that seeking compliance should be an option. The Department agrees with this comment and encourages the use of other measures, including liens on the HOME-assisted property, to ensure that the housing remains affordable. The regulation has been revised.

Section 92.508 Recordkeeping

One commenter asked that the regulation clarify that records for items required under the state CHAS or CHAS performance reports need not be maintained in two or more separate places. The Department agrees that CHAS records or reports need not be also kept in HOME files. The regulation does not set out requirements on how records are to be kept.

Another commenter wrote that states should not be required to maintain all records at the state level; states should have flexibility to impose record keeping responsibilities to local government sub-recipients. The Department agrees and the regulation has been revised.

One commenter made the general comment that the record keeping requirements are excessive. The Department believes that the record keeping requirements set forth in the regulation are the minimum required to show that the funds have been used in accordance with all HOME requirements. Section 284 of the statute requires HUD to establish uniform recordkeeping requirements.

The Department received a few comments concerning record retention. One commenter wanted clarification on how long records must be maintained by the jurisdiction. Another commenter wrote that it is unreasonable to require records to be kept by states for three years past the occupancy compliance period; many records should be able to be discarded three years after the activity has been completed or three years after all project activities except final occupancy compliance for the period of affordability have been completed.

The Department agrees that the regulation setting forth the record retention requirements should be clarified. Consistent with 24 CFR 85.42 (except in the case of disputes or displacement and acquisition) basic records must be kept for three years after closeout of the funds. However, because the housing must remain affordable for the required period of time, some project records must be kept for three years beyond the required period of affordability. These project records include records on: the amount of HOME funds spent on the project; tenant information (including yearly income verification); rents charged; annual on-site inspections; and resale, if any.

One commenter requested that community groups and intended beneficiaries have access to data used by HUD to track a jurisdiction's compliance with HOME requirements. The regulation at § 92.508(c)(1) requires access to the jurisdiction's records, subject to state and local privacy laws.

Section 92.509 Performance Reports

The Department received several comments concerning performance reports. Under section 284(a) of the statute, the Department is required to establish uniform performance reporting requirements. The report must include information on the actions required by section 281(a) of the statute on the minority outreach program regarding contracting.

One commenter made the general plea to keep the reporting requirements simple to reduce costs of administering the program.

Two comments concern overlap with the CHAS report. One commenter wrote that many elements of the annual performance report must be provided in the CHAS performance reports and that states should have the option of including some additional specific discussion of the HOME Program in the CHAS report rather than submitting two separate reports. Another commenter said that the HOME performance report is too burdensome and duplicates elements required under the CHAS report. The Department acknowledges that there may be some overlap with the CHAS report; however, the level of detail necessary for the reports is likely to be different. (HUD is in the process of developing the CHAS report forms.) The HOME report and the information in the C/MI System will serve as the basis of the information on the HOME Program in the CHAS report. It is not the Department's intention to require any additional information concerning the HOME Program in the CHAS report which is not already included in the HOME report or C/MI System.

One commenter argued that reporting on repayments, interest, and other returns on HOME investments is too onerous. The Department believes that this information is essential, because the statute requires these funds to be used for affordable housing in accordance with all HOME requirements.

Subpart L—Performance Reviews and Sanctions

Section 92.550 Performance Reviews

The Department received one comment on performance reviews. The commenter stated that outside parties, such as community groups and intended program beneficiaries, should be able to participate in the review process by triggering a HUD review. The Department believes that the regulation permits participation by outside parties. The regulations require the participating jurisdiction to provide citizens with access to HOME program records. The regulation provides that performance reviews will be conducted annually and HUD will consider relevant information concerning the participating jurisdiction's performance, including citizen comments. If the particular facts (including information provided by citizens) warrant investigation, HUD has the right to conduct additional reviews.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

This rule constitutes a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a regulatory impact analysis (RIA) has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410.

The major costs identified in the RIA for the HOME Program were the appropriated funds, administrative costs, and State and local matching contributions. Some of the costs

included in the appropriation (now set at $1.5 billion in FY 1992), are not social costs, i.e., costs to society as a whole, but are transfers, or reallocations of resources without producing goods or services. For example, tenant-based rental assistance is a transfer, while new construction is a cost and produces a benefit. The RIA estimated that the Department would require 257 staff years in FY 1992. The benefits of the HOME Program identified in the RIA included development and support for affordable rental housing and homeownership through acquisition, new construction, and rehabilitation of affordable housing and creating incentives to provide tenant-based rental assistance. There were also a number of the intangible benefits attributable to the HOME Program identified in the RIA, including the reduction of drug abuse and crime, improved mental and physical health, improved education, and others.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, urban counties, or states.

Regulatory Agenda

This rule was listed as sequence number 1344 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53395) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this proposed rule has federalism implications concerning the division of local, state, and federal responsibilities. The Department has submitted to OMB a Federalism Assessment, containing a certification that the policies in this rulemaking have been assessed in light of the Executive Order's fundamental federalism principles. Among other matters, the Federalism Assessment identifies provisions in the rule that raise federalism implications, considers alternative ways of structuring these provisions, and identifies the extent to which the provisions of the rule impose costs or burdens on the states, including the likely source of funding for the states, and the ability of the states to fulfill the purposes of the policy. The Federalism Assessment is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects in 24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, a new part 92 is added to subtitle A of title 24 of the Code of Federal Regulations, to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

Subpart A—General

Sec.

Subpart B—Allocation Formula

Subpart C—Participating Jurisdiction: Designation and Revocation of Designation—Consortia

Subpart D—Program Description

Subpart E—Program Requirements

Eligible and Prohibited Activities

Income Targeting

Matching Contribution Requirement

Subpart F—Project Requirements

Subpart G—Community Housing Development Organizations

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Subpart A—General

§ 92.1 Overview and purpose.

(a) *Overview.* This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program). In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships to provide more affordable housing. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

(b) *Purpose.* The purposes of the Home Program are:

(1) To expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans;

(2) To mobilize and strengthen the abilities of states and units of general local government throughout the United States to design and implement strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing;

(3) To provide participating jurisdictions, on a coordinated basis, with the various forms of federal housing assistance, including capital investment, mortgage insurance, rental assistance, and other federal assistance, needed—

(i) To expand the supply of decent, safe, sanitary, and affordable housing;

(ii) To make new construction, rehabilitation, substantial rehabilitation, and acquisition of such housing feasible; and

(iii) To promote the development of partnerships among the federal government, states and units of general local government, private industry, and nonprofit organizations able to utilize effectively all available resources to provide more of such housing;

(iv) To make housing more affordable for very low-income and low-income families through the use of tenant-based rental assistance;

(v) To develop and refine, on an ongoing basis, a selection of model programs incorporating the most effective methods for providing decent, safe, sanitary, and affordable housing, and accelerate the application of such methods where appropriate throughout the United States to achieve the prudent and efficient use of HOME funds;

(vi) To expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing;

(vii) To ensure that federal investment produces housing stock that is available and affordable to low-income families for the property's remaining useful life, is appropriate to the neighborhood surroundings, and, wherever appropriate, is mixed income housing;

(viii) To increase the investment of private capital and the use of private sector resources in the provision of decent, safe, sanitary, and affordable housing;

(ix) To allocate federal funds for investment in affordable housing among participating jurisdictions by formula allocation;

(x) To leverage HOME funds insofar as practicable with state and local matching contributions and private investment;

(xi) To establish for each participating jurisdiction a HOME Investment Trust Fund with a line of credit for investment in affordable housing, with repayments back to its HOME Investment Trust Fund being made available for reinvestment by the jurisdiction;

(xii) To provide credit enhancement for affordable housing by utilizing the capacities of existing agencies and mortgage finance institutions when most efficient and supplementing their activities when appropriate; and

(xiii) To assist very low-income and low-income families to obtain the skills and knowledge necessary to become responsible homeowners and tenants.

§ 92.2 Definitions.

Adjusted income. See §§ 92.203 and 92.610.

Administrative costs means reasonable and necessary costs, as described in OMB Circular A–87,[1] incurred by the participating jurisdiction in carrying out its eligible program activities in accordance with prescribed regulations. Administrative costs include any cost equivalent to the costs described in § 570.206 of this title (program administration costs for the CDBG Program) and project delivery costs, such as new construction and rehabilitation counseling, preparing work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities applying for or receiving HOME funds. Administrative costs do not include eligible project-related costs that are incurred by and charged to project owners.

Annual income. See §§ 92.203 and 92.610.

Certification means a written assertion, based on supporting evidence, which must be kept available for inspection by HUD, the Inspector General and the public, which assertion is deemed to be accurate for purposes of this part, unless HUD determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Commit to a specific local project or *commitment* means:

(1) For a project which is privately owned when the commitment is made:

(i) If the project is for rehabilitation or new construction, a written legally binding agreement between the participating jurisdiction and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) agrees to provide HOME assistance to the owner for an identifiable project as defined in this regulation that can reasonably be expected to start construction within six months of the agreement and in which the owner agrees to start construction within that period.

(ii) If funds are used for tenant-based rental assistance, the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.211.

(iii) If the project is for acquisition, a written legally binding agreement, i.e., contract for sale, between the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) agrees to provide HOME assistance to the owner for purchase of the project that can reasonably be expected to be accomplished within six months of the agreement and in which the owner agrees to transfer title within that period.

(2) For a project that is publicly owned when the commitment is made, the Project Set-Up Report submitted under the Cash and Management Information System which identifies a specific project that will start construction within six months of receipt of the Project Set-Up Report. Under both paragraphs (1) and (2) of this definition, the date HUD enters into the Cash and Management Information System (§ 92.502) an acceptable Project Set-Up Report for a project is deemed to be the date of project commitment.

Community housing development organization means a private nonprofit organization that—

(1) Is organized under state or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:

(i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and

(iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing;

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code of 1986;

(5) Does not include a public body (including the participating jurisdiction) or an instrumentality of a public body. An organization that is state or locally chartered may qualify as a community housing development organization; however, the state or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members can be public official;

(6) Has standards of financial accountability that conform to Attachment F of OMB Circular No. A–110 (Rev.) "Standards for Financial Management Systems." [2];

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by—

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire state), provided the governing board contains low-income residents from each county of the multi-county area; and

(ii) Providing a formal process for low-income, program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(9) Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced accomplished key staff

[1] See § 92.505 concerning the availability of OMB Circulars.

[2] See § 92.505 concerning the availability of OMB Circulars.

members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and

(10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community (from the date the participating jurisdiction provides HOME funds to the organization). However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Family has the same meaning given that term by part 812 of this title.

First-time homebuyer means an individual and his or her spouse who have not owned a home during the 3-year period before the purchase of a home with HOME funds, except that—

(1) Any individual who is a displaced homemaker (as defined in this section) may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) Any individual who is a single parent (as defined in this section) may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

Government-sponsored mortgage finance corporations means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation.

HOME funds means funds made available under this part through allocations and reallocations, plus all repayments and interest or other return on the investment of these funds.

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots.

Housing strategy means a comprehensive housing affordability strategy prepared in accordance with part 91 of this title, consisting of either a complete submission or an annual update. *Approved housing strategy* means a housing strategy that has been approved by HUD in accordance with part 91 of this chapter.

HUD means the United States Department of Housing and Urban Development.

Indian Housing Authority means any entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians that is established either by exercise of the power of self-government of an Indian tribe independent of state law; or by operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Jurisdiction means a state or unit of general local government.

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Metropolitan city has the meaning given the term in § 570.3 of this title.

Monthly adjusted income. See §§ 92.203 and 92.610.

Monthly income. See §§ 92.203 and 92.610.

Low-income neighborhood means a neighborhood that has at least 51 percent of its households at or below 80 percent of median income for the area.

Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government. If the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Participating jurisdiction means any jurisdiction (as defined in this section) that has been so designated by HUD in accordance with § 92.105.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that—

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity: Self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding

provisions of this definition, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

Project means a site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under this part. Project includes all the activities associated with the site and building. If there is more than one site associated with a project, the sites must be within a four block area.

Project completion means that all necessary title transfer requirements and construction work have been performed and the project in HUD's judgement complies with the requirements of this part (including the property standards adopted under § 92.251); the final drawdown has been disbursed for the project; and a Project Completion Report has been submitted and processed in the Cash and Management Information System (§ 92.502) as prescribed by HUD. For tenant-based rental assistance, the final drawdown has been disbursed for the project and the final payment certification has been submitted and processed in the Cash and Management Information System as prescribed by HUD.

Public housing agency (PHA) means any state, county, municipality or other governmental entity or public body (or its agency or instrumentality) that is authorized to engage in or assist in the development or operation of low-income housing. The term includes any Indian Housing Authority.

Reconstruction means the rebuilding of housing on the same foundation. Reconstruction is rehabilitation for purposes of this part.

Secretary means the Secretary of Housing and Urban Development.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has one or more minor children for whom the individual has custody or joint custody; or

(ii) Is pregnant.

Single room occupancy (SRO) housing means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. The unit may contain either food preparation facilities or sanitary facilities, or both. Alternatively, sanitary facilities may be located outside the unit and be shared by tenants in the project. SRO does not include facilities for students.

State means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State recipient. See § 92.201(b)(2).

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

Substantial rehabilitation means the rehabilitation of residential property at an average cost for the project in excess of $25,000 per dwelling unit.

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a state; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

Urban county has the meaning given the term in § 570.3 of this title.

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 92.3 Waivers.

Upon determination of good cause, the Secretary may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Subpart B—Allocation Formula

§ 92.50 Formula allocation.

(a) *Jurisdictions eligible for a formula allocation.* HUD will provide allocations of funds in amounts determined by the formula described in this section to—

(1) Units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under § 92.101; and

(2) States.

(b) *Amounts available for allocation; state and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving for grants to Indian tribes one percent (or such other percentage or amount, as authorized by Congress) of the total funds appropriated and after reserving up to such amounts as may be authorized by law for housing education and organization support and for coordinated federal support activities.

(c) *Formula factors.* The formula for determining allocations uses the following factors. The first and sixth factors are weighted 0.1; the other four factors are weighted 0.2.

(1) Vacancy-adjusted rental units where the household head is at or below the poverty level. These rental units are multiplied by the ratio of the national rental vacancy rate over a jurisdiction's rental vacancy rate.

(2) Occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs). *Overcrowding* is a condition that exists if there is more than one person per room occupying the unit. *Incomplete kitchen facilities* means the unit lacks sink with running water, a range, or a refrigerator. *Incomplete plumbing* means the unit lacks hot and cold piped water, a flush toilet, or a bathtub or shower inside the unit for the exclusive use of the occupants of the unit. *High rent costs* occur when more than 30 percent of household income is used for rent.

(3) Rental units built before 1950 occupied by poor families.

(4) Rental units described in paragraph (c)(2) of this section multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national cost.

(5) Number of families at or below the poverty level.

(6) Population of a jurisdiction multiplied by a net per capita income (pci). To compute net pci for a jurisdiction or for the nation, the pci of a three person family at the poverty threshold is subtracted from the pci of the jurisdiction or of the nation. The index is constructed by dividing the national net pci by the net pci of a jurisdiction.

(d) *Calculating formula allocations for units of general local government.* (1) Initial allocation amounts for units of general local government described in paragraph (a)(1) of this section are determined by multiplying the sum of the shares of the six factors in paragraph (c) of this section by 60 percent of the amount available under paragraph (b) of this section for formula allocation. The shares are the ratio of the weighted factor for each jurisdiction over the corresponding factor for the total for all of these units of general local government.

(2) If any of the initial amounts for such units of general local government in Puerto Rico exceeds twice the national average, on a per rental unit basis, that amount is capped at twice the national average.

(3) The initial amounts are revised by taking amounts of less than $250,000 that were initially distributed to units of general local government and redistributing these amounts to units of general local government that had initial distribution amounts of $250,000 or more. This redistribution calculation is repeated until 95 percent of the funds have been distributed among units of general local government in amounts of $500,000 or more. On each repetition of the calculation, the threshold, which initially was $250,000, is raised by half the difference between the previous threshold and $500,000. Any amounts under $500,000 that, on the last recalculation, were distributed to units of general local government are redistributed to units of general local government that have distribution amounts of $500,000 or more.

(4) The allocation amounts determined under paragraph (d)(3) of this section are reduced by any amounts that are necessary to provide increased allocations to states that have no unit of general local government receiving a formula allocation (see paragraph (e)(4) of this section). These reductions are made on a pro rata basis, except that no unit of general local government allocation is reduced below $500,000.

(e) *Calculating formula allocations for states.* (1) Forty percent of the funds available for allocation under paragraph (b) of this section are allocated to states. The allocation amounts for states are calculated by determining initial amounts for each state, based on the sum of the shares of the six factors. For 20 percent of the funds to be allocated to states, the shares are the ratio of the weighted factor for the entire state over the corresponding factor for the total for all states. For 80 percent of the funds to be allocated to states, the shares are the ratio of the weighted factor for all units of general local government within the state that do not receive a formula allocation over the corresponding factor for the total for all states.

(2) If the initial amounts for Puerto Rico (based on either or both the 80 percent of funds or 20 percent of funds calculation) exceed twice the national average, on a per rental unit basis, each amount that exceeds the national average is capped at twice the national average, and the resultant funds are reallocated to other states on a pro rata basis.

(3) If the initial amounts when combined for any state are less than the $3,000,000, the allocation to that state is increased to the $3,000,000 and all other state allocations are reduced by an equal amount on a pro rata basis, except that no state allocation is reduced below $3,000,000.

(4) The allocation amount for each state that has no unit of general local government within the state receiving an allocation under paragraph (d) of this section is increased by $500,000. Funds for this increase are derived from the funds available for units of general local government, in accordance with paragraph (d)(4) of this section.

§ 92.51 Establishing list of participating jurisdictions that may use funds for new construction and rental housing production set-aside.

(a) *General.* HUD will identify each jurisdiction receiving a formula allocation under § 92.50 that is authorized by HUD to use its formula allocation for new construction, without the jurisdiction having to qualify under § 92.209 or § 92.210. HUD will also identify areas not receiving a formula allocation, as areas in which HOME funds may be used for new construction. Areas which HUD reviews for eligibility for new construction are metropolitan cities, urban counties, consortia, counties not containing these three groups, and the balance of counties after having excluded these three groups. The list of areas eligible for new construction does not include areas with populations under 25,000. A state that is authorized by HUD to use its HOME funds for new construction may do so only within the boundaries of an area that HUD has identified as an area where new construction is authorized.

(b) *Eligibility criteria.* (1) HUD determines the local jurisdictions and areas in which new construction is authorized based on the following factors:

(i) *Low vacancy.* The national rental vacancy rate divided by the corresponding vacancy rate for a local jurisdiction or area.

(ii) *Low turnover.* The national rate at which renter families moved in year and months preceding the decennial census divided by the corresponding turnover rate for a local jurisdiction or area.

(iii) *High proportion of substandard housing.* The percent of rental units with at least one of four problem conditions as of the most recent decennial census divided by the corresponding national rate. The four problem conditions are: lack of plumbing, lack of kitchen facilities, overcrowding, and 30 percent rent burden, as described in § 92.50(c)(2).

(iv) *High fair market rent.* The most recently available two-bedroom Section 8 Existing Housing fair market rent for a local jurisdiction or area divided by the national two-bedroom Section 8 Existing Housing fair market rent.

(v) *High population growth.* The population growth rate from 1980 to the latest population estimate or count for a local jurisdiction or area divided by the corresponding national rate.

(2) A jurisdiction or an area is placed on the list of jurisdictions and areas where new construction is authorized if it has above-average values for at least three of the five eligibility factors and more than a specified value on a composite of the five factors. The ratio for each of the five factors is set up so that above-average need is always expressed as a value greater than one. The composite factor is an average of the five factors. In computing the composite factor, component factors are capped for the most extreme high and low of values for metropolitan cities and urban counties.

(c) *Data used to identify eligible jurisdictions.* Jurisdictions are identified as eligible based on the latest data available 90 days before the beginning of a fiscal year. The data are derived for each jurisdiction, by comparable

methods and for the same period of time.

(d) *Requests for review of eligibility determinations.* (1) A unit of general local government receiving a formula allocation under § 92.50 but not on the list of jurisdictions in which new construction is authorized may request HUD to reconsider its eligibility. A state may request HUD to consider its eligibility to use HOME funds for new construction with respect to a jurisdiction that does not receive a formula allocation and has a population of 25,000 or more. A state also may request HUD to consider its eligibility to use HOME funds for new construction in an area with a population less than 25,000.

(2) The requesting jurisdiction must submit: Information described in paragraph (d)(3) of this section; an explanation of how the information submitted supports the conclusion that the supply of available rental housing is not sufficient to meet the demand arising from the growth of households and turnover of units in the housing market; a description of the data sources, including the methods for obtaining survey data; and documentation that the survey data are statistically representative of conditions within the housing market area. Requests under paragraph (d) of this section must be submitted to the appropriate HUD field office.

(3) HUD will evaluate the information submitted and, based on a decision that it is reasonably accurate and representative of local market conditions, will make the eligibility determination. In making this determination, HUD will consider information that demonstrates:

(i) The current rental housing vacancy rate is at a low level relative to the rate required for a balanced market. Typically, a rental housing vacancy rate below four percent would be considered low unless the housing market area is not growing or experiencing low rates of household growth. The analysis of vacancy data should also consider the direction the market is moving. For example, a significant increase in rental housing production or a decline in population growth would indicate that the housing shortage will be a short term condition.

(ii) The growth rate of renter households is larger than average and the number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households. An annual increase in rental households of two percent or more for a sustained period of several years generally would be considered a rapid rate of growth.

(iii) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing.

(iv) A significant number or proportion of the households holding Section 8 Certificates or Housing Vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time is required to find units.

(4) A decision by HUD, under this paragraph (d), to authorize the use of HOME funds for new construction in an area does not alter the rental housing production set-asides that HUD has made under paragraph (e) of this section.

(e) *Formula for determining the rental housing production set-aside.* (1) For each jurisdiction receiving a formula allocation that HUD identifies, under paragraph (a) of this section, as being authorized to use HOME funds for new construction, HUD, to the extent required by statute, will also specify the amount of the jurisdiction's respective formula allocation that it must use, for a period ending 24 months after the allocation amounts are deposited in the jurisdiction's HOME Investment Trust Fund, only to produce affordable rental housing through new construction or substantial rehabilitation (rental housing production set-aside). Any of these funds that the jurisdiction does not so commit within the 24-month period remains available for an additional 12-month period for commitment to any eligible activity permitted by subpart E of this part.

(2) If there is a statutory directive to set aside a specified percentage of the total formula allocation to be used for new construction or substantial rehabilitation, HUD determines the amount of each jurisdiction's rental housing production set-aside as follows. Of the amount that must be set aside, 80 percent is allocated to units of general local government and 20 percent is allocated to states. A state or local jurisdiction's share of the amount set aside is based on the share of its need relative to the need in all such jurisdictions. The need in a local jurisdiction is determined by subtracting one from the jurisdictions's composite factor and multiplying the difference by the jurisdiction's formula allocation. A state's need is determined by summing the need as calculated for all areas within the state. Each area's need is calculated by subtracting one from the area's composite factor and multiplying the difference by the area's population.

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§ 92.52 Publishing formula allocation, rental housing production set-aside and list of new construction-eligible participating jurisdictions.

Not later than 20 days after funds become available to HUD, HUD will allocate HOME funds and will then promptly publish a **Federal Register** notice listing all jurisdictions receiving a formula allocation and the amount of each jurisdiction's formula allocation, all jurisdictions determined by HUD to be authorized to use their formula allocation for new construction and the amount of each such jurisdiction's rental housing production setaside, and all other areas in which HUD has determined HOME funds may be used for new construction.

Subpart C—Participating Jurisdiction: Designation and Revocation of Designation—Consortia

§ 92.100 General.

This subpart C sets out the requirements for a jurisdiction to be designated a participating jurisdiction, including the requirements for local jurisdictions to form consortia. It also sets out the conditions and procedures under which HUD may revoke a jurisdiction's designation as a participating jurisdiction.

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if—

(1) By March 31 of the fiscal year before the start of the fiscal year (by September 3, 1991, for fiscal year 1992), the consortium:

(i) Notifies HUD of its intention to be considered a consortium for purposes of this section;

(ii) Submits a written certification by the state that the consortium will direct its activities to alleviation of housing problems within the state; and

(iii) Advises HUD that the consortium has executed a legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of this part and providing that the representative member assumes overall responsibility for ensuring that the consortium's HOME program is

carried out in compliance with the requirements of this part; and

(2) Before the end of the fiscal year in which the notice is submitted, HUD determines that the consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make this determination as quickly as practicable after receiving the consortium's notice in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations.

(b) A metropolitan city or an urban county may be part of a consortium. A unit of general local government that is included in an urban county may be part of a consortium, only through the urban county, regardless of whether the urban county receives a formula allocation.

(c) The consortium's status as a unit of general local government continues for three successive fiscal years or until HUD revokes its designation as a participating jurisdiction, whichever is shorter. If the consortium contains an urban county, the consortium's status as a unit of general local government is coterminous with the period of qualification of the urban county. During the period of qualification, additional units of general local government may join the consortium, but no included unit of general local government may withdraw from the consortium.

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§ 92.102 Participation threshold amount.

(a) A unit of general local government must have a formula allocation under § 92.50 that is equal to or greater than $750,000; or

(b) If a unit of general local government's formula allocation is less than $750,000:

(1) HUD finds that the unit of general local government has a local PHA and has demonstrated a capacity to carry out the provisions of this part, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance for activities comparable to the eligible activities under this part; and

(2) The state has authorized HUD to transfer to the unit of general local government a portion of the state's allocation or the state, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and $750,000. A state, subject to the distribution of assistance requirements in § 92.201, may authorize such a transfer even if the state is not designated a participating jurisdiction. If the state is not designated a participating jurisdiction or does not receive an allocation, it may only make transfers to units of general local government in amount necessary for the respective units of general local government to meet the $750,000 participation threshold. When a state that has received a rental housing production set-aside under § 92.51 transfers a portion of its allocation to a unit of general local government, the state may specify that the transfer includes a part of the state's set-aside. A unit of general local government that is on the list of new construction-eligible participating jurisdictions published by HUD under § 92.52 must use funds transferred to it from a state's rental housing production set-aside for new construction or for substantial rehabilitation of rental housing, for the period specified in § 92.51(e). A unit of general local government that is not on the list of new construction-eligible participating jurisdictions published by HUD under § 92.52 must use funds transferred to it from a state's rental housing production set-aside only for substantial rehabilitation of rental housing, for the period specified in § 92.51(e).

§ 92.103 Notification of intent to participate.

(a) A jurisdiction must notify HUD in writing, not later than 30 days after publication of the formula allocation notice under § 92.52, of its intention to become a participating jurisdiction.

(b) A unit of general local government that has a formula allocation of less than $750,000 must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

(1) Authorization from the state to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

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§ 92.104 Submission of housing strategy.

A jurisdiction that has not submitted a housing strategy to HUD or has submitted an abbreviated housing strategy (as provided for in § 91.25 of this title) must submit to HUD, not later than 90 days after providing notification under § 92.103, a housing strategy in accordance with part 91 of this title.

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§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's housing strategy in accordance with part 91 of this title, HUD will designate the jurisdiction as a participating jurisdiction.

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§ 92.106 Continuous designation as a participating jurisdiction.

Once a state or unit of general local government is designated a participating jurisdiction, it remains a participating jurisdiction for subsequent fiscal years and the requirements of §§ 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with § 92.107.

§ 92.107 Revocation of designation as a participating jurisdiction.

HUD may revoke a jurisdiction's designation as a participating jurisdiction if—

(a) HUD finds, after reasonable notice and opportunity for hearing as provided in § 92.552(b) that the jurisdiction is unwilling or unable to carry out the provisions of this part, including failure to meet matching contribution requirements; or

(b) The jurisdiction's formula allocation, plus funds provided under § 92.102(b), falls below $750,000 for three consecutive years, below $625,000 for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

(c) When HUD revokes a participating jurisdiction's designation as a participating jurisdiction, HUD will reallocate any remaining funds in the jurisdiction's HOME Investment Trust Fund established under § 92.500 in accordance with § 92.451.

Subpart D—Program Description

§ 92.150 Submission of program description and certifications.

(a) *Submitting a program description.* A participating jurisdiction must submit a program description each fiscal year within 45 days of the date of publication of the formula allocations under § 92.52. A jurisdiction that has not yet been designated as a participating jurisdiction must submit a program description within 45 days of designation.

(b) *Content of program description.* The program description must provide the following information:

(1) An executed Standard Form 424;

(2) For a local participating jurisdiction, the estimated use of HOME funds and of matching contributions (consistent with needs identified in its approved housing strategy) for each of the following categories of eligible activities: new construction, substantial rehabilitation, other rehabilitation, acquisition (not involving new construction or rehabilitation), tenant-based rental assistance and an estimate of whether units assisted will be rental or owner-occupied;

(3) For a state, a description of how the state will distribute funds (consistent with needs identified in its approved housing strategy) i.e. transferring funds to other participating jurisdictions that do not meet the participation threshold allocation level in § 92.102, administering a competitive process, or directly administering HOME funds. To the extent known, states should identify the areas in which HOME funds will be used.

(4) The amount of HOME funds that the participating jurisdiction is reserving for community housing development organizations. An explanation of how the participating jurisdiction will work with community housing development organizations and a description of the activities (type of activity and level of funds) that community housing development organizations will be undertaking for the participating jurisdiction;

(5) If the participating jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale should be described as required in § 92.254(a)(4);

(6) If the participating jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211.

(7) If a participating jurisdiction intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment.

(8) A statement of the policy and procedures to be followed by the participating jurisdiction to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under §§ 92.350 and 92.351, respectively.

(c) The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(2) If applicable, the certifications required, by § 92.209 for a participating jurisdiction that is not on the list published under § 92.51, to do new construction to facilitate a neighborhood revitalization program;

(3) If applicable, the certifications required, by § 92.210 for a participating jurisdiction that is not on the list published under § 92.51, to do new construction on the basis of special needs;

(4) If the participating jurisdiction intends to provide tenant-based assistance, the certification required by § 92.211;

(5) A certification that the submission of the program description is authorized under state and local law (as applicable), and the participating jurisdiction possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(6) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(7) A certification that the participating jurisdiction and, if applicable, state recipients, will use HOME funds pursuant to the participating jurisdiction's approved housing strategy and in compliance with all requirements of this part;

(8) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(9) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by 24 CFR part 87.

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§ 92.151 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review a participating jurisdiction's program description and will approve the description unless it is not consistent with its approved housing strategy or if the participating jurisdiction has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.150 (b)(5), (b)(7), and (b)(8), if applicable. If the information submitted is not consistent with the approved housing strategy and the participating jurisdiction has not submitted information on § 92.150 (b)(5), (b)(7), and (b)(8), if applicable, the participating jurisdiction may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory.

(b) *Review period.* The HUD Field Office will notify the participating jurisdiction if its program description is not consistent with its approved housing strategy or determinations cannot be made under § 92.150 (b)(5), (b)(7), or (b)(8) within 30 days of receipt and the participating jurisdictions will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the activities in its program description.

(c) *Conditional approval of program description.* If the participating jurisdiction does not submit the supporting information under § 92.150 (b)(5) or (b)(7) sufficient to show consistency with its approved housing strategy or to allow the required HUD determinations or HUD disapproves the guidelines under § 92.150(b)(5) or the form of investment under § 92.150(b)(7), the Field Office may approve the program description conditionally excepting those activities covered by those sections until such time as the necessary information is submitted.

(d) *HOME Investment Partnership Agreement.* After Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the participating jurisdiction. The funds are obligated on the date HUD notifies the participating jurisdiction of HUD's execution of the agreement in accordance with this section and § 92.501.

§ 92.152 Amendments to program description.

In general, a participating jurisdiction is not required to submit to HUD amendments to its program description that it makes during the fiscal year. The participating jurisdiction must document amendments in its file, and if the amendments affect future allocations, must include these amendments in the program description for the following fiscal year. However, a participating jurisdiction must submit any amendments to the following for HUD approval: guidelines for resale (see 92.150(b)(6); other forms of investment (see § 92.150(b)(7); and minority and women business outreach program (§ 92.150(b)(8)).

Subpart E—Program Requirements

§ 92.200 Private-public partnership.

Each participating jurisdiction must make all reasonable efforts, consistent with the purposes of this part, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in the implementation of the jurisdiction's approved housing strategy, including participation in the financing, development, rehabilitation and management of affordable housing. Nothing in the previous sentence shall preclude public housing authorities from fully participating in the implementation of a jurisdiction's approved housing strategy.

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§ 92.201 Distribution of assistance.

(a) *Local.* Each participating jurisdiction must, insofar as is feasible, distribute HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved housing strategy.

(b) *State.* (1) Each participating state is responsible for distributing HOME funds throughout the state according to the state's assessment of the geographical distribution of the housing need within the state, as identified in the state's approved housing strategy. The state must distribute HOME funds to rural areas in amounts that take into account the nonmetropolitan share of the state's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the state's approved housing strategy. To the extent the need is within the boundaries of a participating unit of general local government, the state and the unit of general local government shall coordinate activities to address that need.

(2) A state may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the state and all or some of the units of general local government perform specified program functions. A unit of general local government designated by a state to receive HOME funds from a state is a state recipient.

(3)(i) A state that uses state recipients to perform program functions shall ensure that the state recipients use HOME funds in accordance with the requirements of this part and other applicable laws. A state shall include in its written agreement with its state recipients such additional provisions (including provisions permitting the state to withdraw or reduce HOME funds or take other actions based on noncompliance by the state recipient) as may be appropriate to ensure compliance and to enable the state to carry out its responsibilities under this part.

(ii) The state shall conduct such reviews and audit of its state recipients as may be necessary or appropriate to determine whether the state recipient has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching contribution requirement.

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§ 92.202 Site and neighborhood standards.

A participating jurisdiction must administer its HOME program in a manner that provides housing that:

(a) Is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, E.O. 11063, and HUD regulations issued pursuant thereto; and

(b) Promotes greater choice of housing opportunities.

(c) In carrying out these requirements with respect to new construction, a participating jurisdiction must follow § 882.708(c) of the title.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.203 Income determinations.

Whenever a participating jurisdiction makes a determination under this part based on family income or adjusted family income, it must use the definitions of *annual income, adjusted income, monthly income,* and *monthly adjusted income,* as those terms are defined in part 813 of this title.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) Jurisdictions that are not participating jurisdictions and community housing development organizations receiving competitive reallocations from HUD are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following.

(1) Subpart E (Program Requirements) of this part: Sections 92.208 through 210 do not apply. The matching contribution requirements in §§ 92.218 through 92.221 do not apply.

(2) Subpart K (Program Administration) of this part:

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for repayment, interest and other return of investment of HOME funds. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(B) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Cash and Management Information System) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and compliance with Treasury Circular No. 1075 (31 CFR part 205) is required.

(iii) Section 92.503 (Repayment of investment) applies, except that repayments, interest and other return on investment of HOME funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; monitoring) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements, the flood insurance requirements labor requirements, and lead-based paint requirements, applicable to participating jurisdictions.

(c) Subpart B (Allocation Formula), subpart C (Participating Jurisdiction: Designation and Revocation of Designation—Consortia), subpart D (Program Description), and subpart G (Community Housing Development Organizations) of this part do not apply.

Eligible and Prohibited Activities

§ 92.205 Eligible activities: General.

(a) *Eligible activities.* (1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; and to provide tenant-based rental assistance. The specific eligible costs for these activities are set forth in § 92.206.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

(3) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before a participating jurisdiction commits HOME funds to the project is new construction for purposes of this part.

(4) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing walls, in which case, the project is new construction for purposes of this part.

(b) *Forms of assistance.* A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(c) *Minimum amount of assistance.* The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is $1,000 times the number of affordable units in the project. The minimum amount of HOME funds that must be invested in tenant-based rental assistance is $1,000 times the average number of families assisted each year.

(d) *Termination before completion.* If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to the participating jurisdiction's HOME Investment Trust Fund (except as provided in § 92.301(a)(3) and 92.301(b)(3) for project-specific assistance to community housing development organizations).

§ 92.206 Eligible costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the participating jurisdiction and the Model Energy Code referred to in § 92.251;

(2) For rehabilitation, costs to meet the applicable rehabilitation standards of the participating jurisdiction or correcting substandard conditions (minimally the housing quality standards at § 882.109 of this title), to make essential improvements including energy-related repairs or improvements, improvements necessary to permit the use by handicapped persons, and the abatement of lead-based paint hazards, as required by § 92.355, and to repair or replace major housing systems in danger of failure; and

(3) For both new construction and rehabilitation, costs to demolish existing structures and for improvements to the project site that are in keeping with improvements of surrounding, standard projects, and costs to make utility connections.

(4) For new construction, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the participating jurisdiction's local HOME Investment Trust Fund account.

(b) *Acquisition costs.* Costs of acquiring improved or unimproved real property.

(c) *Related soft costs.* Other reasonable and necessary costs incurred by the owner and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys, fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees;

(3) Costs of a project audit that the participating jurisdiction may require with respect to the development of the project; and

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 92.351.

(d) *Relocation costs.* Costs of relocation payments and other relocation assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where assistance is required under § 92.353 (b) or (c) or determined by the

participating jurisdiction to be appropriate under § 92.353(d).

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance payments made to provide tenant-based rental assistance for a family.

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§ 92.207 [Reserved]

§ 92.208 New construction: HUD-authorized.

A participating jurisdiction may use HOME funds for new construction of affordable housing if the participating jurisdiction is on the list of jurisdictions authorized to use HOME funds for new construction published by HUD under § 92.52 or successfully appeals its omission from that list. A state participating jurisdiction that is authorized by HUD to use HOME funds for new construction may use HOME funds for new construction only in those areas of the state that are on the list published by HUD under § 92.52.

§ 92.209 New construction: Neighborhood revitalization.

A participating jurisdiction that does not meet the requirements of § 92.208 (including a state with respect to areas not on the list published by HUD under § 92.52) may nonetheless use HOME funds for new construction of affordable housing on the basis of a neighborhood revitalization program, if—

(a) The participating jurisdiction determines and certifies that rehabilitation is not the most cost-effective way to meet the participating jurisdiction's need to expand the supply of affordable housing within the neighborhood and the participating jurisdiction's housing needs, within the neighborhood, cannot be met through rehabilitation of the available housing stock; and

(b) Certifies that—

(1) The program of new construction is needed to facilitate a neighborhood revitalization program that emphasizes rehabilitation of substandard housing for rental or homeownership opportunities by low-income and moderate-income families in an area designated by the jurisdiction. The participating jurisdiction must document this element of its certification with quantitative evidence demonstrating that the neighborhood revitalization program has emphasized the rehabilitation of substandard housing. Evidence that at least 51 percent of all funds spent by the participating jurisdiction on the neighborhood revitalization program (within at least a one-year period before the certification is made) was spent for rehabilitation of substandard housing will meet this test;

(2) The housing is to be located in a low-income neighborhood;

(3) The housing is to be developed, owned, or sponsored by a community housing development organization or a public agency; and

(4)(i) The number of housing units to be constructed with HOME funds does not exceed 20 percent of the total number of housing units in the neighborhood revitalization program that are assisted with HOME funds; or

(ii)(A) The housing is to be located in a severely distressed area within the neighborhood with large tracts of vacant land and abandoned buildings;

(B) The housing is to be located in an area within the neighborhood with an inadequate supply of existing housing that can economically be rehabilitated to meet identified housing needs; or

(C) The new construction is required to accomplish the neighborhood revitalization program.

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§ 92.210 New construction: Special needs.

A participating jurisdiction that does not meet the requirements of § 92.208 (including a state with respect to areas not on the list published by HUD under § 92.52) may nonetheless still use HOME funds for new construction of affordable housing on the basis of special needs, if—

(a) The participating jurisdiction determines and certifies that rehabilitation is not the most cost-effective way to expand the supply of affordable housing for the special need and the special need cannot be met through rehabilitation of the available housing stock;

(b) The HOME funds are used for new construction of one or more of the following:

(1) Housing for families of five or more persons;

(2) Housing for persons with disabilities;

(3) Single room occupancy housing;

(4) Housing that is necessary to further the desegregation or racial deconcentration of housing within the jurisdiction pursuant to a court-approved settlement agreement, compliance agreement, or voluntary plan approved by HUD if tenant-based assistance is not sufficient to meet the specified need within a reasonable time; and

(c) The participating jurisdiction certifies on the basis of objective data in its annual approved housing strategy: that a high priority need for such housing exists in the jurisdiction; and that there is not a supply of vacant, habitable, public housing units in excess of normal vacancies resulting from turnovers that could meet the specified need.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.211 Tenant-based rental assistance.

(a) *General.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if—

(1) The participating jurisdiction certifies that the use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's annual approved housing strategy for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing, and specifies the local market conditions that lead to the choice of this option; and

(2) The participating jurisdiction selects families from the Section 8 waiting list of a PHA operating within the jurisdiction of the participating jurisdiction, in accordance with the PHA's preferences established under 24 CFR 882.219. The participating jurisdiction may select eligible families currently residing in units that are designated for rehabilitation under the participating jurisdiction's HOME program without requiring that the family be placed on the PHA's Section 8 waiting list. Families so selected may use the tenant-based assistance in the rehabilitated unit or in other qualified housing. A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(b) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section. The participating jurisdiction may operate the program, itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

(c) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of

the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(d) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(e) *Lease requirements.* The lease must comply with the requirements in § 92.253 (a) and (b).

(f) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size may not be less than 80 percent of the published section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount) for the unit size. (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under § 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(g) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the performance requirements set forth in § 882.109 of this title. In addition, the housing must meet the acceptability criteria set forth in § 882.109 of this title, except for such variations, as are proposed by the participating jurisdiction and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(h) *Use of Section 8 assistance.* In any case where assistance under section 8 of the United States Housing Act of 1937 becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.212 REACH: Asset recycling information dissemination.

(a) *General.* HUD will make available upon request by any participating jurisdiction a list of eligible properties that are located within the jurisdiction and that are owned or controlled by HUD to facilitate their purchase, development, or rehabilitation with HOME funds.

(b) *Eligible properties.* An eligible property under this section must:

(1) Be an unoccupied single-family or multifamily dwelling, such that acquisition and rehabilitation of the dwelling would not result in the displacement of any residents of the dwelling; and

(2) Have an appraised value that does not exceed:

(i) In the case of a 1- to 4-family dwelling, the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act. For a cooperative unit, the appraised value for a cooperative share may not exceed the balance remaining after subtracting from the 1-family mortgage limit an amount equal to the blanket mortgage covering the cooperative development which is attributable to this cooperative unit: or

(ii) In the case of a dwelling with more than 4 units, the applicable maximum dollar amount limitation, as determined under § 221.514 (b)(1) and (c) of this title that would apply to a mortgage insured under section 221(d)(3)(ii) of the National Housing Act for elevator-type structures, involving a nonprofit mortgagor.

§ 92.213 Development of model programs.

HUD will develop and make available from time to time model programs that have been developed in cooperation with participating jurisdictions, government-sponsored mortgage finance corporations, nonprofit organizations, the private sector, and other appropriate parties and that are designed to carry out the purposes of this part.

§ 92.214 Prohibited activities.

HOME funds may not be used to—

(a) Defray any administrative cost of a participating jurisdiction. Administrative costs include any cost equivalent to the costs described in § 570.206 of this title (program administration costs for the CDBG Program) and project delivery costs, such as new construction and rehabilitation counseling, preparing work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities applying for or receiving HOME funds;

(b) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;

(c) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, including the activities specified in § 791.403(b)(1) of this title, or preventing displacement from projects assisted with rental rehabilitation grants under part 511 of this title.

(d) Provide nonfederal matching contributions required under any other federal program;

(e) Provide assistance authorized under part 965 (PHA-Owned or Leased Projects—Maintenance and Operation) of this title;

(f) Carry out activities authorized under part 968 (Public Housing Modernization) of this title; or

(g) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title.

(h) Provide assistance (other than tenant-based rental assistance or assistance to a first-time homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction under § 92.502 or § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

§ 92.215 Limitation on jurisdictions under court order.

(a) HOME funds may not be used to carry out housing remedies or to pay fines, penalties, or costs associated with an action in which a participating

jurisdiction has been adjudicated, by a federal, state, or local court, to be in violation of title VI of the Civil Rights Act of 1964, the Fair Housing Act, or any other federal, state, or local law promoting fair housing or prohibiting discrimination.

(b) HOME funds may be used in connection with a settlement that has been entered into in any case where claims of violations described in paragraph (a) of this section have been asserted against a participating jurisdiction only to carry out housing remedies with eligible activities.

Income Targeting

§ 92.216 Income targeting: Tenant-based rental assistance and rental units—Initial eligibility determination and reexamination.

(a) Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(1) Not less than 90 percent of such funds are invested with respect to dwelling units that are occupied by families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; and

(2) The remainder of these funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later.

(b) The participating jurisdiction must determine an applicant's income eligibility and eligibility as a family at the time the applicant receives assistance, and must reexamine family income and family size and composition, at least annually.

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§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at the time funds are invested, whichever is later.

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§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at the time funds are invested, whichever is later.

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Matching Contribution Requirement [3]

§ 92.218 Amount of matching contribution.

(a) Each participating jurisdiction must make contributions to affordable housing assisted with HOME funds, throughout a fiscal year. The contributions must total not less than:

(1) Fifty percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year for new construction projects; plus

(2) Thirty-three percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year for substantial rehabilitation projects; and

(3) Twenty-five percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year for tenant-based rental assistance, housing rehabilitation projects other than substantial rehabilitation projects, and acquisition projects of standard housing that does not constitute new construction.

(b) Amounts made available under § 92.102(b)(2) from the resources of a state (other than a transfer of the state's formula allocation), the local participating jurisdiction, or both, to enable the local participating jurisdiction to meet the participation threshold amount are not required to be matched and do not constitute matching contributions.

(c) All eligible activities carried out with respect to a project carry with them the matching contribution requirements associated with the project designation. A project consisting of one structure which combines new construction and rehabilitation activities (e.g., adding one or more units outside of the existing walls of a structure) is designated as a new construction project, irrespective of costs attributable to each activity. For purposes of project designation, projects involving the following activities are designated as rehabilitation projects: Reconfiguring a structure to reduce the number of total units in order to increase the number of large family units; adding one or more rooms (e.g., bedroom or bathroom) outside of the existing walls for purposes of meeting occupancy or code standards; adding one or more units within the existing structure, such as in an existing basement.

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§ 92.219 Recognition of matching contribution.

(a) A contribution is recognized as a matching contribution only if it is made with respect to a tenant who is assisted with HOME funds or it is made with respect to housing that is assisted with HOME funds, and it:

(1) Is made with respect to housing that qualifies as affordable housing under § 92.252 or § 92.254; or

(2) Is made with respect to any portion of a project (including a mixed-use project under § 92.256) not less than 50 percent of the dwelling units of which qualify as affordable housing under § 92.252 or § 92.254.

(b) In addition to the requirements of paragraph (a) of this section, a cash contribution is recognized as a matching contribution only if it is used for costs eligible under § 92.206 or § 92.301, or for the following costs (which are not eligible costs for HOME funds): a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, operating subsidies, or costs relating to the portion of a mixed-

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[3] The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, Public Law 101–139, 105 Stat. 736, approved October 28, 1991 (FY 1992 Appropriations Act) contained a proviso, concerning amounts appropriated for the HOME Program for fiscal year 1992, which prohibits the Department from requiring any contributions by or in behalf of a participating jurisdiction, notwithstanding section 220 of the HOME Investment Partnership Act. Accordingly, participating jurisdictions are not required to comply with the matching contributions requirements in §§ 92.218 through 92.222 for HOME funds draw down from accounts provided in the FY 1992 Appropriations Act, regardless of the fiscal year in which the FY 1992 HOME funds are drawn down.

income or mixed-use project not related to the affordable housing units.

§ 92.220 Form of matching contribution.

(a) *Eligible forms.* Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:

(1) Cash contributions from nonfederal resources. To be a cash contribution, funds must be contributed permanently to the HOME program, regardless of the form of investment the jurisdiction provides to a project. Therefore all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part.

(i) A cash contribution may be made by the participating jurisdiction, nonfederal public entities, private entities, or individuals. A cash contribution may be made from program income (as defined by § 85.25(b) of this title) from a federal grant earned after the end of the award period if no federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(ii) The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution.

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received from the loan to the project, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:

(*1*) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10–year Treasury note rate plus 200 basis points;

(*2*) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(*3*) With respect to a multifamily project, a rate equal to the 10–year Treasury note rate plus 300 basis points.

(2) The value, based on customary and reasonable means for establishing value, of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred (including state low-income housing tax credits) in a manner that achieves affordability of housing assisted with HOME funds. The amount of any such real estate taxes may be based on post-improvement property value, using customary and reasonable means of establishing value. For taxes, fees, or charges that are given for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, forgone, or deferred.

(3) The value of land or other real property, not acquired with federal resources, as appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser; and

(4) The cost of investment, not made with federal resources, in on-site and off-site infrastructure that the participating jurisdiction docunents are directly required for affordable housing assisted with HOME funds. The infrastructure investment must have been completed no earlier than 12 months before HOME funds are committed to such affordable housing.

(5) The payment of administrative expenses from nonfederal resources (which may include CDBG funds as defined in 24 CFR 570.3) in an amount equal to 7 percent of the HOME allocation and reallocated funds provided to the participating jurisdiction during the fiscal year.

(b) *Ineligible forms.* The following are examples of forms of contributions that do not meet the requirements of paragraph (a) of this section and do not count toward meeting a participating jurisdiction's matching contribution requirement:

(1) Contributions made with or derived from federal resources or funds, regardless of when the federal resources or funds were received or expended. CDBG funds (defined in § 570.3 of this title) are federal funds for this purpose;

(2) The interest rate subsidy attributable to the federal tax-exemption on financing or the value attributable to federal tax credits;

(3) Owner equity or investment in a project; and

(4) Sweat equity.

§ 92.221 Match credit.

(a) *Administrative expenses.* Each participating jurisdiction will be credited with a matching contribution for administrative expenses in an amount equal to 7 percent of the HOME allocation and reallocated funds provided to the participating jurisdiction during the fiscal year. The credit will be given when the funds are awarded.

(b) *Matching contributions other than administrative expenses.* Contributions are credited at time the contribution is made, as follows:

(1) A cash contribution it credited when the funds are expended.

(2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.

(3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred is credited at the time the state or local government officially waives, forgoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of land or other real property is credited at the time ownership of the property is transferred.

(5) The cost of investment in infrastructure directly required for affordable housing assisted with HOME funds is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the affordable housing if the infrastructure was completed before the commitment of HOME funds.

(c) Excess match. Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made will be carried over and applied to future fiscal years match liability.

§ 92.222 Reduction of matching contribution requirement.

(a) If a local participating jurisdiction demonstrates to the satisfaction of HUD that a reduction of the matching requirement specified in § 92.218 is necessary to permit the jurisdiction to carry out the purposes of this part, HUD may reduce the matching contribution requirement during a period not to

exceed three years after the jurisdiction is first designated as a participating jurisdiction. The reduction may not be more than 75 percent in the first year, not more than 50 percent in the second year, and not more than 25 percent in the third year.

(b) A participating jurisdiction must submit any request for a reduction in its matching contribution requirement with its program description. HUD will consider granting a reduction only in those cases where a participating jurisdiction demonstrates that each of the following conditions exist:

(1) The participating jurisdiction has low fiscal capacity as measured by poverty and capita income;

(2) The participating jurisdiction has an immediate and serious fiscal problem; and

(3) The participating jurisdiction will have a high matching contribution liability for the years for which the reduction is sought based on activities identified in its program description and planned activities for future fiscal years (e.g., activities such as tenant-based rental assistance or moderate rehabilitation that will result in expenditure of HOME funds during the period for which the reduction is requested) and the matching contribution liability will exceed the match credit for administrative costs.

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Subpart F—Project Requirements

§ 92.250 Maximum per-unit subsidy amount.

The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed 67 percent of the per-unit dollar limits established by HUD under § 221.514(b)(1) and (c) of this title for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act that apply to the area in which the housing is located. These limits are available from HUD. For a project using a combination of HOME and the federal low-income tax credit, the applicable section 221(d)(3) per unit dollar limits are reduced by the per unit net proceeds from any sale of the tax credit or by the per unit present discounted cash value of the stream of the project owner's share of the tax credit based on a discount rate equal to the 10–year Treasury note rate.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.251 Property standards.

Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The participating jurisdiction must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39. Housing for homeownership that is to be rehabilitated after transfer of the ownership interest must be free from any defects that pose a danger to health or safety before transfer of the ownership interest, and must meet the applicable property standards not later than 2 years after the transfer.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) *Rent limitation.* A rental housing project (including the non-owner-occupied units in housing purchased with HOME funds in accordance with § 92.254) qualifies as affordable housing under this part only if the project:

(1) Bears rents not greater than the lesser of—

(i) The fair market rent for existing housing for comparable units in the area as established by HUD under § 888.111 of this title, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii) of this section;

(2) Has not less than 20 percent of the units—

(i) Occupied by very low-income families who pay as a contribution toward rent (excluding any federal or state rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by HUD. To obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant; or

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

(3) Is occupied only by households that qualify as low-income families;

(4) Is not refused for leasing to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document; and

(5) Will remain affordable, pursuant to deed restrictions, for not less than the appropriate period, beginning after

project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership.

Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds:	
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The participating jurisdiction must review and approve rents proposed by the owner for units with "flat rents," i.e., units subject to the maximum rent limitations in paragraph (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in low-income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the participating jurisdiction annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for lower income units is subject to the provisions of outstanding leases, in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent not less than 30 percent of the family's adjusted monthly income, as recertified annually.

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section.

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§ 92.253 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(d) *Maintenance and replacement.* An owner of rental housing assisted with HOME funds must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that—

(1) Are consistent with the purpose of providing housing for very low-income and low-income families,

(2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease,

(3) Give reasonable consideration to the housing needs of families that would have a preference under § 960.211 (Federal selection preferences for admission to Public Housing) of this title; and

(4) Provide for—

(i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

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§ 92.254 Qualification as affordable housing: homeownership.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing only if the housing:

(1)(i) Has an initial purchase price that does not exceed the mortgage limit for the type of single family housing (1-to 4-family residence, condominium unit, combination manufactured home and

lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act. For a cooperative unit, the purchase price for a cooperative share may not exceed the balance remaining after subtracting from the 1-family mortgage limit an amount equal to the blanket mortgage covering the cooperative development which is attributable to this cooperative unit; and

(ii) Has an estimated appraised value after any repair needed to meet property standards in § 92.251 that does not exceed the appropriate mortgage limit described in paragraph (a)(1)(i) of this section;

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;

(3) Is made available for initial purchase only to first-time homebuyers; and

(4) Is made available for subsequent purchase only—

(i) To a low-income family that will use the property as its principal residence; and

(ii) At a price consistent with guidelines that are established by the participating jurisdiction and determined by HUD to be appropriate—

(A) To provide the owner with a fair return on investment, including any improvements, and

(B) To ensure that the housing will remain affordable to a reasonable range of low-income homebuyers for a period of 20 years for newly constructed housing or otherwise for 15 years. Housing remains affordable if the subsequent purchaser's monthly payments of principal, interest, taxes, and insurance do not exceed 30 percent of the gross income of a family with an income equal to 75 percent of median income for the area, as determined by HUD with adjustments for smaller and larger families.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act (see 24 CFR 201.10, 203.18, 203.18a, 203.18b, and 234.27); and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

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§ 92.255 Mixed-income project.

Housing that accounts for less than 100 percent of the dwelling units in a project qualifies as affordable housing if the housing meets the criteria of § 92.252 or § 92.254. Each building in the project must contain housing that meets the requirements of § 92.252 or § 92.254. See § 92.219 for matching contribution requirements concerning mixed-income projects.

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§ 92.256 Mixed-use project.

Housing in a project that is designed in part for uses other than residential use qualifies as affordable housing if such housing meets the criteria of § 92.252 or § 92.254. A project that contains, in addition to dwelling unit, laundry and community facilities for the exclusive use of the project residents and their guests, does not constitute a project that is designed in part for uses other than residential use. Residential living space must constitute at least 51 percent of the project space. Each building within the project must contain residential living space. See § 92.219 for matching contribution requirements concerning mixed-use projects.

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§ 92.257 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOME funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity (which may be an entity established, but not controlled, by the religious organization. The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

§ 92.258 Limitation on the use of HOME funds with FHA mortgage insurance.

When HOME funds are to be used in connection with housing in which acquisition, new construction, or rehabilitation is financed with a mortgage insured by HUD under chapter II of this title, then, for rental housing, the period that the project must remain affordable as provided in binding commitments meeting the requirements of by § 92.252(a)(5) or, for homeownership, the applicable period specified in the participating jurisdiction's guidelines established under § 92.254(a)(4)(ii), must be equal to the term of the HUD-insured mortgage.

Subpart G—Community Housing Development Organizations

§ 92.300 Set-aside for community housing development organizations.

(a) For a period of 18 months after the allocation (including, for a state, funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, an allocation transferred from a state under § 92.102(b)) is made available to a participating jurisdiction, the participating jurisdiction must reserve not less than 15 percent of these funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. The funds must be provided to a community housing development organization and the funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. If a community housing development organization's involvement in a project is as an owner it must have control of the project, as evidenced by legal title or a valid contract of sale. If it owns the project in partnership, it or its wholly owned for-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective management control.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the

jurisdiction's approved housing strategy and to encourage such community housing development organizations to do so.

(c) HOME funds reserved under paragraph (a) of this section may be used for activities eligible under § 92.205. Up to 10 percent of the HOME funds so reserved may be used for activities specified under § 92.301.

(d) These HOME funds are subject to reduction, as provided in § 92.500(d).

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§ 92.301 Project-specific assistance to community housing development organizations.

(a) *Project-specific technical assistance and site control loans*—(1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) *Allowable expenses.* A loan under this paragraph (a) of this section may be provided to cover project expenses necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance. General operational expenses of the community housing development organization are not allowable expenses.

(3) *Repayment.* A community housing development organization that receives a loan under paragraph (a) of this section must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) *Project-specific seed money loans*—(1) *General.* Within the limit specified in paragraph (a) of this section, HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) *Eligible sponsors.* A loan under paragraph (b) of this section may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to buy the property), a preliminary financial commitment, and a capable development team.

(3) *Repayment.* A community housing development organization that receives a loan under paragraph (b) of this section must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

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§ 92.302 Housing education and organizational support.

(a) *General.* HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations:

(1) To facilitate the education of low-income homeowners and tenants; and

(2) To promote the ability of community housing development organizations to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this part.

(b) *Delivery of assistance.* HUD will provide assistance under this section only through contract—

(1) With a nonprofit intermediary organization that, in the determination of HUD—

(i) Customarily provides, in more than one community, services related to the provision of decent housing that is affordable to low-income and moderate-income persons or the revitalization of deteriorating neighborhoods;

(ii) Has demonstrated experience in providing a range of assistance (such as financing, technical assistance, construction and property management assistance, capacity building, and training) to community housing development organizations or similar organizations that engage in community revitalization;

(iii) Has demonstrated the ability to provide technical assistance and training for community-based developers of affordable housing; and

(iv) Has described the uses to which such assistance will be put and the intended beneficiaries of the assistance; or

(2) With another organization, if a participating jurisdiction demonstrates that the organization is qualified to carry out eligible activities and that the jurisdiction would not be served in a timely manner by intermediaries specified under paragraph (b)(1) of this section. Contracts under paragraph (b)(2) of this section must be for activities specified in an application from the participating jurisdiction. The application must include a certification that the activities are necessary to the effective implementation of the participating jurisdiction's approved housing strategy.

(c) *Eligible activities.* Assistance under this section may be used only for the following eligible activities:

(1) *Organizational support.* Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization.

(2) *Housing education.* Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, or organizing homeowners and tenants who are eligible to receive assistance under other provisions of this part.

(3) *Program-wide support of nonprofit development and management.* Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under this part.

(4) *Benevolent loan funds.* Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make

those funds available at favorable rates to developers of low-income housing and to low-income homebuyers.

(5) *Community development banks and credit unions.* Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing.

(d) *Limitations.* (1) A community housing development organization may not receive assistance under paragraphs (c)(1) (organizational support) and (c)(2) (housing education) of this section for any fiscal year in an amount that, together with other federal assistance, provides more than 50 percent of the organization's total operating budget in the fiscal year.

(2) Contracts under this section with any one contractor for a fiscal year may not—

(i) Exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(ii) Provide more than 20 percent of the operating budget (which may not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) *Single-state contractors.* Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year must be made available for eligible contractors that have worked primarily in one state.

(f) *Notice of funding.* HUD will publish a notice in the **Federal Register** announcing the availability of funding under this section, as appropriate.

§ 92.303 Tenant participation plan.

A community housing development organization that receives assistance under this part must adhere to a fair lease and grievance procedure approved by the participating jurisdiction and provide a plan for and follow a program of tenant participation in management decisions.

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Subpart H—Other Federal Requirements

§ 92.350 Equal opportunity and fair housing.

(a) *Equal opportunity.* No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with the following:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–20) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (3 CFR 1964–65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that—

(i) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with HOME funds be given to low-income persons residing within the unit of general local government or the metropolitan area (or nonmetropolitan county) as determined by HUD, in which the project is located; and

(ii) To the greatest extent feasible, contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project; and

(5) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, each participating jurisdiction must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

(b) *Fair housing.* In accordance with the certification made with its housing strategy, each participating jurisdiction must affirmatively further fair housing. Actions described in § 570.904(c) of this title will satisfy this requirement.

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§ 92.351 Affirmative marketing.

(a) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for HOME-assisted housing containing 5 or more housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. (The affirmative marketing procedures do not apply to families with housing assistance provided by the PHA or families with tenant based rental assistance provided with HOME funds.) The participating jurisdiction must annually assess the affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions. (These requirements and procedures are comparable to the affirmative marketing requirements and procedures for the Rental Rehabilitation Program (24 CFR part 511), and jurisdictions that have participated in that program should consider basing their requirements and procedures on their existing Rental Rehabilitation Program requirements and procedures.)

(b) The affirmative marketing requirements and procedures adopted must include:

(1) Methods for informing the public, owners, and potential tenants about federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(2) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(3) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing.without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(4) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and

(5) A description of how the participating jurisdiction will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(c) A state that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

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§ 92.352 Environmental review.

(a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

(b) *Responsibility for review.* (1) A participating jurisdiction must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. In accordance with part 58, the participating jurisdiction must carry out the environmental review of an activity and obtain approval of its request for release of funds before HOME funds are committed for the activity.

(2) A state participating jurisdiction must also assume responsibility for approval of requests for release of its HOME funds.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted by an entity that is not a participating jurisdiction.

§ 92.353 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of—

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and 49 CFR part 24. A "displaced person" must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*1*) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or

(*2*) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average

monthly utility costs that do not exceed the greater of—

(*i*) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(*ii*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either—

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*ii*) Other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(*ii*) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a *displaced person* if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, state or local law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by state or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Block Grant funds.* If Community Development Block Grant funds are used to pay part of the cost of a HOME project other than the general planning and administrative costs eligible under 24 CFR 570.205 and 570.206, or optional relocation costs eligible under 24 CFR 570.201(i)(2), the project is subject to the requirements of the Housing and Community Development Act of 1974. (This includes the section 104(d) requirements to provide relocation assistance and replace low/moderate-income housing as described at 24 CFR 570.606(c) (Entitlement Program and HUD-Administered Small Cities Program) and 24 CFR 570.496a(c) (State CDBG Program).)

(f) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(g) *Appeals.* A person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a *displaced person*, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(h) *Responsibility of participation jurisdiction.* (1) The jurisdiction must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the jurisdiction to comply.

(2) The cost of required relocation assistance is an eligible project cost. This cost also may be paid from state or local funds, or funds available from other sources.

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§ 92.354 Labor.

(a) *General.* Any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under this part must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–5), will be paid to all laborers and mechanics employed in the development of affordable housing involved, and such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332). Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

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§ 92.355 Lead-based paint.

Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, participating jurisdictions are responsible for testing and abatement activities.

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§ 92.356 Conflict of interest.

(a) *Applicability.* (1) In the procurement of property and services by participating jurisdictions, state recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section applies. These cases include the acquisition and disposition of real property and the provision of assistance by the participating jurisdiction, by the state recipient, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).[4]

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, state recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's attorney that the interest for which the exception is sought would not violate state or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

§ 92.357 Debarment and suspension.

As required by 24 CFR part 24, each participating jurisdiction must require participants in lower tier covered transactions to include the certification in appendix B of 24 CFR part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A participating jurisdiction may rely on the certification, unless it knows the certification is erroneous.

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§ 92.358 Flood insurance.

(a) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the commitment.

(b) Participating jurisdictions located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(c) This section does not apply to HOME funds provided to a state.

§ 92.359 Executive Order 12372.

(a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and the Department's implementing regulations at 24 CFR part 52, allow each state to establish its own process for review and comment on proposed federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

Subpart I—Technical Assistance

§ 92.400 Coordinated federal support for housing strategies.

(a) *General.* HUD will provide assistance under this subpart I to—

(1) Facilitate the exchange of information that would help participating jurisdictions carry out the purposes of this part, including information on program design, housing finance, land use controls, and building construction techniques;

(2) Improve the ability of states and units of general local government to

[4] See § 92.505 concerning the availability of OMB Circulars.

design and implement housing strategies, particularly those states and units of general local government that are relatively inexperienced in the development of affordable housing;

(3) Encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of this part;

(4) Improve the ability of states and units of general local government, community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction, and operation of affordable housing; and

(5) Facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance, and demonstration projects.

(b) *Conditions of contracts*—(1) *Eligible organizations.* HUD will carry out subpart I of this part insofar as is practicable through contract with—

(i) A participating jurisdiction or agency thereof;

(ii) A public purpose organization established pursuant to state or local legislation and responsible to the chief elected official of a participating jurisdiction;

(iii) An agency or authority established by two or more participating jurisdictions to carry out activities consistent with the purposes of this part;

(iv) A national or regional nonprofit organization that has a membership comprised predominantly of entities or officials of entities that qualify under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section; or

(v) A professional and technical services company or firm that has demonstrated capacity to provide services under subpart I of this part.

(2) *Contract terms.* Contracts under subpart I of this part must be for not more than 3 years and must not provide more than 20 percent of the operating budget of the contracting organization in any one year. Within any fiscal year, contracts with any one organization may not be entered into for a total of more than 20 percent of the funds available under subpart I of this part in that fiscal year.

(c) *Notice of funding.* HUD will publish a notice in the **Federal Register** announcing the availability of funding under this section as appropriate.

Subpart J—Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of housing strategy) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if—

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;

(ii) Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or

(iii) Submit its housing strategy in accordance with § 92.104; or

(2) HUD after providing for amendments and resubmissions in accordance with § 91.70 of this title, disapproves the jurisdiction's housing strategy.

(b) *Designation revoked.* HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.

(c) *Manner of reallocation.* HUD will reallocate funds that are subject to reallocation under this section in the following manner:

(1) If the funds to be reallocated under this section are from a state, HUD will:

(i) Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the state and with preference being given to applications from units of general local government that are not participating jurisdictions, and

(ii) Reallocate the remainder by formula in accordance with § 92.454.

(2) If the funds to be reallocated are from a unit of general local government:

(i) Located in a state that is a participating jurisdiction, HUD will reallocate the funds to that state. The state, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or

(ii) Located in a state that is a not a participating jurisdiction, HUD will:

(A) Reallocate the funds by competition among units of general local government and community housing development organizations within the state, with priority going to applications for affordable housing within the unit of general local government; and

(B) Reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of community housing development organization set-aside.

(a) HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under § 92.300(d).

(b) HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations.

§ 92.453 Criteria for competitive reallocations.

(a) *General.* HUD will invite applications through **Federal Register** notice for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. HUD will publish one or more such notices throughout a fiscal year, as warranted by the source and amount of the HOME funds available for competitive reallocation. The notice will describe the application requirements and procedures, including the deadline for the submission of applications of at least 30 days, the total funding available for the competition and any maximum amount of individual awards. The notice will describe the selection criteria and any special factors to be evaluated in awarding points under the selection criteria. The selection criteria are those set forth in this section and any additional requirements in §§ 92.451 and 452. The notice will also state whether HUD will make selections based on the application for a project or activities.

(b) *Threshold factors.* To be considered for a competitive reallocation, an application submitted by a jurisdiction must demonstrate to the satisfaction of HUD that—

(1) *Cooperative efforts.* The jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the state and appropriate participating jurisdictions within the state to develop, coordinate, and implement housing strategies under the HOME Investment Partnerships Act; and

(2) *Barrier removal.* (i) The jurisdiction is implementing, or has plans to implement, a strategy to remove or ameliorate negative effects of public policies which raise the cost of housing or constrain incentives to develop, maintain, or improve affordable housing; or demonstrate the absence of these policies.

(ii) A local jurisdiction must provide a satisfactory explanation—based on its approved housing strategy, or based on the state's approved housing strategy, if the jurisdiction is not required to submit a housing strategy—of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by state and local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. The jurisdiction must also provide a satisfactory description of its strategy to remove or ameliorate negative effects, if any, of such policies.

(iii) A state must provide a satisfactory explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the state are affected by state, as well as local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. A state must also provide a satisfactory description of its strategy to remove or ameliorate directly any negative effects, as well as to work with units of general local government involved to remove or ameliorate such negative effects of such policies. The strategy should propose, as appropriate, a program of state enabling reforms, direct state action as well as model codes, standards, and technical assistance for local governments.

(c) *Evaluation criteria.* Each applicant jurisdiction meeting the threshold factors in paragraph (b) of this section and each applicant that is not a jurisdiction will be evaluated and ranked in accordance with criteria contained in the notice that are consistent with the following factors and take into account selection preferences and other requirements in §§ 92.450 through 92.452 that may apply, based on the source of the HOME funds being competitively reallocated.

(1) *Policies (25 Points).* The degree to which the applicant is pursuing policies that:

(i) Make existing housing more affordable;

(ii) Preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(iii) Increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and,

(iv) Remedy the effects of discrimination and improve the housing opportunities for disadvantaged minorities.

(2) *Actions (50 points).* The applicant's actions that—

(i) Direct HOME funds to benefit very low-income families, to a greater extent than required by § 92.252(a). Extra consideration will be given for activities that expand the supply of affordable housing for very low-income families whose annual incomes do not exceed 30 percent of the median family income for the area;

(ii) Apply the tenant selection preference categories applicable under section 8 of the United States Housing Act of 1937 to the selection of tenants for housing assisted with HOME funds;

(iii) Provide matching resources in excess of funds required under § 92.218; and

(iv) Stimulate a high degree of investment and participation by the private sector, including nonprofit organizations.

(3) *Commitment (25 points).* The applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through the new construction or rehabilitation within the previous two years, making adjustments for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this part through new construction or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program.

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§ 92.454 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under §§ 92.451 and 92.452;

(2) Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;

(3) Any HOME funds withdrawn by HUD from a participating jurisdiction under § 91.75(c)(2) of this title for failure to submit in a timely manner a performance report required by § 91.75 of this title that is satisfactory to HUD; and

(4) Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction.

(b) Any reallocation of funds from a state must be made only among all participating states, and any reallocation of funds from units of general local government must be made only among all participating units of general local government, except those participating jurisdictions that HUD has removed from participating in reallocations under § 92.552.

(c) A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A state participating jurisdiction's share is comparably determined using the amount available for reallocation to states.

(d) HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is $1000.

Subpart K—Program Administration

§ 92.500 The HOME Investment Trust Fund.

(a) *General.* A HOME Investment Trust Fund consists of the accounts

described in this section solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction must establish a local HOME Investment Trust Fund account.

(b) *Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the state's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and

(c) *Local Account.* (1) The local account of the HOME Investment Trust Fund includes repayments of HOME funds and matching contributions and any payment of interest or other return on the investment of HOME funds and matching contributions.

(2) The participating jurisdiction may establish a second local account of the HOME Investment Trust Funds if—

(i) The participating jurisdiction has its own affordable housing trust fund that the participating jurisdiction will use for matching contributions to the HOME program;

(ii) State statute or local ordinance requires repayments from its own trust fund to be made to the trust fund;

(iii) The participating jurisdiction establishes a separate account within its own trust fund for repayments of the matching contributions and any payment of interest or other return on investment of the matching contributions; and

(iv) The funds in the account are used solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part.

(3) The funds in the local account cannot be used for the matching contribution and do not need to be matched.

(d) *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of—

(1) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not awarded to a community housing development organization pursuant to a written agreement within 18 months after the funds were deposited in the United States Treasury account;

(2) Any funds in the United States Treasury account (except rental housing production set-aside funds under § 92.51) that are not committed within 24 months after the last day of the month in which the funds were deposited in the United States Treasury account;

(3) Any rental housing production set-aside funds under § 92.51 that are not committed within 36 months after the last day of the month in which the funds were deposited in the United States Treasury account;

(4) Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which the funds were deposited in the United States Treasury account; and

(5) Any penalties assessed by HUD under § 92.551.

§ 92.501 HOME Investment Partnership Agreement.

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement must ensure that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

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§ 92.502 Cash and Management Information System; disbursement of HOME funds.

(a) *General.* The Home Investment Trust Fund account established in the United States Treasury is managed through HUDs Cash and Management Information (C/MI) System for the HOME Investment Partnerships Program. The C/MI System is a computerized system which manages, disburses, collects, and reports information on the use of HOME funds in the United States Treasury account.

(b) *Project set-up.* (1) After the participating jurisdiction executes the HOME Investment Partnership Agreement, complies with the environmental requirements under part 58 of this title for release of funds, and submits the appropriate banking and security documents, the participating jurisdiction may identify (set up) specific investments in the C/MI System. Investments that require the set-up of projects in the C/MI System are the acquisition, new construction, or moderate or substantial rehabilitation of real property, and investments of HOME funds to provide tenant-based rental assistance. Within 12 calendar days of project set-up, the participating jurisdiction is required to submit a Project Set-Up Report to HUD for each project set up in the C/MI System. Until an acceptable Project Set-Up Report is received and entered in the C/MI System, HOME funds for the project are not considered committed (as defined in § 92.2), and, therefore, are subject to recapture and reallocation to the extent authorized by § 92.500.

(2) If the Project Set-Up Report is not received within 20 days of the project set-up call, the project will be cancelled automatically by the C/MI System. In addition, a project which has been committed in the C/MI System for 12 months without an initial disbursement of funds will be automatically cancelled by the C/MI System.

(c) *Disbursement of HOME funds.* (1) After information from an acceptable Project Set-Up report is entered into the C/MI System, HOME funds may be drawn down from the United States Treasury account for the project by the participating jurisdiction by electronic funds transfer. The funds will be deposited in the local account of the HOME Investment Trust Fund of the participating jurisdiction within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the United States Treasury account is conditioned upon the submission of satisfactory information by the participating jurisdiction about the project or tenant-based rental assistance and compliance with other procedures specified by HUD in HUDs forms and issuances concerning the Cash and Management Information System. Copies of these forms and issuances may be obtained from HUD Field Offices.

(2) HOME funds drawn from the United States Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15 day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to the C/MI System for deposit by HUD in the participating jurisdiction's United States Treasury account of the Home Investment Trust Fund. Except for states as provided by the Intergovernmental Cooperation act (31 U.S.C. 6501 et seq.), interest earned after 15 days belongs to the United States and must be remitted promptly, but at least quarterly, to HUD, except that the participating jurisdiction may retain interest amounts up to $100 per year for administrative expenses.

(3) HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the United States Treasury account.

(4) A participating jurisdiction will be paid on an advance basis provided it complies with the requirements of this part.

(5) Except as provided in §§ 92.301(a)(3) and 92.301(b)(3), if a project is terminated before its completion, whether voluntarily by the participating jurisdiction or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the participating jurisdiction to its HOME Investment Trust Fund. If the HOME funds were disbursed from the Treasury account, the amount must be paid to the Treasury account; if the HOME funds were disbursed from the local account, the amount must be paid to the local account. If the amount is not repaid, the participating jurisdiction will be subject to actions under subpart L of this part.

(d) *Pavement certification.* As post-documentation of each drawdown of funds from the United States Treasury account, a participating jurisdiction must submit to HUD a payment certification, for each drawdown, in the form required by HUD. If the payment certification is not received within 10 calendar days of the drawdown, the participating jurisdiction will be suspended from setting up new projects until the payment certification is received by HUD.

(e) *Submission of project completion reports.* A Project Completion Report must be submitted to HUD within 120 days of the final drawdown request for the project. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further project set-ups for the participating jurisdiction. Project set-ups will remain suspended until a satisfactory Project Completion Report is received and entered into the C/MI System.

(f) *State recipients.* State recipients are also given access to the C/MI System for investment of HOME funds upon designation by the state and submission of the appropriate banking and security documents.

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§ 92.503 Repayment of investment.

(a) Housing assisted with HOME funds that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid in accordance with paragraph (b) of this section.

(b) Any repayment of HOME funds (including repayment required if the housing no longer qualifies as affordable housing), and any payment of interest or other return on the investment of HOME funds, must be deposited in the jurisdiction's HOME Investment Trust Fund local account, except that if the jurisdiction is not a participating jurisdiction when the payment or repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

§ 92.504 Participating jurisdiction responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The participating jurisdiction is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of state recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., state recipient, for-profit housing developer, nonprofit organization, homeowner, contractor, community housing development organization, or PHA) the participating jurisdiction must enter into a written agreement with the entity ensuring compliance with the requirements of this part. A state recipient, subrecipient, or contractor must also enter into a written agreement before it disburses funds to any entity. The agreement remains in effect during the period for affordability under § 92.252 or § 92.254, as applicable, or if the entity is a subrecipient, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement must include provisions concerning the following items:

(1) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a contractor, subrecipient, or state recipient, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the participating jurisdiction or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subrecipient or state recipient, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 92.505.

(5) *Project requirement.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all federal laws and regulations described in subpart H of this part, except that the entity does not assume the participating jurisdiction's responsibilities for environmental review in § 92.352 or the intergovernmental review process in § 92.359.

(8) *Affirmative marketing.* The agreement must specify the entity's affirmative marketing responsibilities in accordance with § 92.351.

(9) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 92.257 for the use of HOME funds by religious organizations.

(10) *Requests for disbursements of funds.* The agreement must specify that the entity may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(11) *Reversion of assets.* If the entity is a subrecipient, the agreement must specify that upon expiration of the agreement, the entity must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(12) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(13) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the participating jurisdiction or the intended beneficiaries. The means of enforcement may include liens on real property, deed restrictions, or other provisions. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subrecipient or state recipient, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(14) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required by the participating jurisdiction under § 92.252 or § 92.254.

(d) *Monitoring.* The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds from the participating jurisdiction to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the participating jurisdiction must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. For multifamily housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental housing containing one- to four-dwelling units, an on-site review must be made once within each two-year period. The results of each review must be included in the participating jurisdiction's performance report required by part 91 of this title and must be made available to the public.

(2) Not less than annually, the participating jurisdiction must review the performance of each contractor and subrecipient.

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§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, state recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.35, 85.36, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 and the following requirements of OMB Circular No. A–110 apply to subrecipients receiving HOME funds that are private nonprofit organizations: Attachment B; attachment F; attachment H, paragraph 2; and attachment O. (Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.))

§ 92.506 Audit.

Audits must be conducted in accordance with 24 CFR part 44 and OMB Circular A–133.[5]

§ 92.507 Closeout.

(a) HOME funds from each individual federal fiscal year (i.e., the allocation and any reallocated funds from the particular federal fiscal year appropriation) will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) The matching requirements in § 92.218 have been met;

(3) Project Completion Reports for all projects using funds to be closed out have been submitted and entered into the C/MI System. (Based on the data in the C/MI System, HUD will prepare the Closeout Report.);

(4) The participating jurisdiction has been reviewed and audited and HUD has determined that all requirements, except for affordability, have been met or all monitoring and audit findings have been resolved.

(i) The participating jurisdiction's most recent audit report and audit reports of state recipients, where applicable, must be received by HUD. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the participating jurisdiction agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the participating jurisdiction's next single audit and that the participating jurisdiction may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the participating jurisdiction by the HUD Field Office must include verification of C/MI System data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between C/MI System data and participating jurisdiction or state recipient records.

(b) The Closeout Report contains the final data on the funds and must be signed by the participating jurisdiction and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds, required by paragraph (a)(4)(i) of this section; and

(2) A provision requiring the participating jurisdiction to continue to meet the requirements applicable to housing projects for the period of affordability specified in § 92.252 or § 92.254, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 92.503, if the housing fails to remain affordable for the required period.

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§ 92.508 Recordkeeping.

(a) *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. Records must be kept in a manner that identifies the source of funds of each project (e.g., allocation and reallocation identified by federal fiscal year appropriation and funds in the local account of the HOME Investment Trust Fund and state or local funds provided under § 92.102(b)). At a minimum, the following records are needed:

(1) Requirements for designation as a participating jurisdiction:

(i) Records for a consortium of the agreement among the participating member units of general local government required by § 92.101.

(ii) Records for a unit of general local government receiving a formula allocation of less than $750,000 that demonstrate that funds have been made available (either by the state or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 as required by § 92.102.

(2) Program requirements:

[5] See § 92.505 concerning the availability of OMB Circulars.

(i) Records of the efforts to maximize participation by the private sector as required by § 92.200.

(ii) Records providing a full description of each activity assisted with HOME funds, including its census tract location (if the activity has a geographical locus), the amount of HOME funds budgeted, committed, and expended for the activity.

(iii) Records supporting the participating jurisdiction's determination and certifications under § 92.209 (new construction: Neighborhood revitalization), including a description of how the neighborhood revitalization program emphasizes rehabilitation and the time period of the neighborhood revitalization program; a description of the neighborhood and percentage of households at or below 80 percent of median income.

(iv) Records supporting the participating jurisdiction's determination and certifications under § 92.210 (new construction: Special needs).

(v) Records supporting the participating jurisdiction's certification under § 92.211 (tenant-based rental assistance; the waiting list; determinations of rent reasonableness; calculations of HOME subsidy for each tenant assisted).

(vi) Records for income targeting required by §§ 92.216 and 92.217.

(vii) Records, including individual project records and a running log, demonstrating compliance with the matching requirements in §§ 92.218 through 92.221 including the type and amount of contributions by project.

(3) Project records:

(i) Records that demonstrate that each project meets the property standards in § 92.251.

(ii) Records that demonstrate that each rental housing project meets the requirements of § 92.252 for the required period of affordability. Records must be kept for each family assisted.

(iii) Records that demonstrate compliance with the requirements of § 92.253 for tenant and participant protections.

(iv) Records that demonstrate compliance with the requirements in § 92.254 for affordable housing: homeownership, including the initial purchase price and appraised value (after rehabilitation, if required) of the property. Records must be kept for each family assisted.

(v) Records that indicate whether the project is mixed-income, mixed-use, or both, in accordance with § 92.255 or § 92.256.

(vi) Records evidencing the guidelines adopted by the participating jurisdiction and supporting the certification for each housing project that the combination of federal assistance to the project is not any more than is necessary to provide affordable housing, as required by § 92.150(c)(1).

(4) Community Housing Development Organization set-aside records:

(i) Records indicating the name and qualifications of each community housing development organization and amount of HOME funds awarded.

(ii) Records setting forth the efforts made to identify and encourage community housing development organizations, as required by § 92.300.

(iii) Records supporting project-specific assistance to community housing development organizations under § 92.301, including the impediments to repayment, if repayment is waived.

(5) Other federal requirements records:

(i) Equal opportunity and fair housing records containing:

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of § 92.350, which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(D) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing;

(ii) Records indicating the affirmative marketing procedures and requirements under § 92.351

(iii) Records that demonstrate compliance with environmental review requirements in § 92.352 (and part 58 of this title).

(iv) Records which demonstrate compliance with the requirements in § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

(v) Records demonstrating compliance with labor requirements in § 92.354, including contract provisions and payroll records.

(vi) Records concerning lead-based paint under § 92.355.

(vii) Records supporting requests for waivers of the conflict of interest prohibition in § 92.356.

(viii) Records of certifications concerning debarment and suspension required by § 92.357 (and 24 CFR part 24).

(ix) Records demonstrating compliance with flood insurance requirements under § 92.358.

(x) Records concerning intergovernmental review, as required by § 92.359.

(6) Program administration records:

(i) Records concerning the local account of the HOME Investment Trust Fund, required to be established and maintained by § 92.500, including deposits, disbursements, and balances.

(ii) Records supporting requests for disbursements of HOME funds from the Treasury account and the local account, and other information required for the C/MI System under § 92.502.

(iii) Records indicating source and amounts of repayments, interest, and other return of investment of HOME funds.

(iv) Records of written agreements and monitoring required by § 92.504.

(v) Financial and related records required by § 92.505.

(vi) Records of audits and resolution of audit findings.

(b) A state that distributes HOME funds to state recipients must require state recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) this section, and such other records as the state determines to be necessary to enable the state to carry out its responsibilities under this part. The state need not duplicate the records kept by the state recipients. The state must keep records concerning its review of state recipients required under § 92.201(b)(3).

(c) *Period of record retention.* (1) Except as provided in paragraph (c)(2), (c)(3), or (c)(4) of this section, records must be retained for three years after closeout of the funds.

(2) If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified in paragraph (c)(2) of this section, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

(3) Records regarding project requirements (subpart F) and subpart H requirements that apply for the duration of the period of affordability (§§ 92.350, 92.351, and 92.358), as well as the written agreement and inspection and monitoring reports must be retained for three years after the required period of affordability specified in § 92.252 or § 92.254, as applicable.

(4) Records covering displacements and acquisition must be retained for at least three years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

(d) *Access to record.* (1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, or any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.509 performance reports.

(a) *Management reports.* Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report*—(1) *Submission.* A participating jurisdiction must submit an annual performance report on its HOME activities to the responsible HUD Field Office at such time as HUD may prescribe. Single copies of the report must be provided to the public upon request at no charge.

(2) *Elements of the annual performance report.* The report must contain such information and be in such form as HUD may prescribe, and must include at least the following:

(i) An assessment by the participating jurisdiction of the relationship of the activities carried out under its HOME Investment Partnerships Program to the objectives in its approved housing strategy;

(ii) An analysis of the participating jurisdiction's efforts to maximize participation by the private sector;

(iii) An analysis of the extent to which HOME funds were distributed among different categories of housing needs identified in its approved housing strategy;

(iv) An assessment of the participating jurisdiction's efforts to identify community development housing organizations for participation in its HOME program;

(v) An assessment of the effectiveness of the affirmative marketing actions prescribed in § 92.351;

(vi) An assessment of the effectiveness of the participating jurisdiction's minority outreach program, including an analysis of participation by minorities and women and entities owned by minorities and women in its HOME program and, where appropriate, a statement of additional actions planned to improve performance in the use of minority- and women-owned businesses;

(vii) Data on the total number of households (families and individuals) and business and nonprofit organizations displaced as a result of investments of HOME funds, including the cost of relocation payments (moving expenses and replacement housing), and the number and cost of real property acquisitions; and

(viii) Data on the amount of repayments, interest, and other return on investment of HOME funds and state or local funds provided under § 92.102(b) and the use of the funds for projects, including number of projects assisted, and characteristics of tenants and owners.

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Subpart L—Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the state recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the C/MI System. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or state recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or state recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and state participating jurisdictions administering their own HOME programs, whether the participating jurisdiction:

(i) Has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and

(ii) Has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirement; or

(2) For state participating jurisdictions distributing HOME funds to state recipients, whether the state:

(i) Has met the matching contribution and other requirements of this part;

(ii) Has distributed the funds in accordance with the requirements of this part; and

(iii) Has made such reviews and audits of its recipients as may be appropriate to determine whether they have satisfied the requirements of paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

§ 92.551 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.

(b) *Performance review.* (1) If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD

will take corrective or remedial action in accordance with this section or § 92.552.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part;

(vi) Suspending disbursement of HOME funds for affected activities; and

(vii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account.

(2) HUD may also—

(i) Change the method of payment from an advance to reimbursement basis; and

(ii) Take other remedies that may be legally available.

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;

(ii) Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs made available under § 92.213;

(iii) Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart A or J of this part;

(iv) Require the participating jurisdiction to make matching contributions in amounts required by §§ 92.218(a)(1) through 92.218(3) as HOME funds are drawn from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account; *Provided, however,* That HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction, or at HUD's option, the state recipient.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 92.552; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

Subpart M—Home Funds for Indian Tribes

§ 92.600 General.

For each fiscal year, HUD will provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds will be awarded competitively by HUD Field Offices that have responsibility for the HOME Indian program and will be made available each fiscal year pursuant to a notice of funding availability (NOFA) published in the **Federal Register**, in accordance with the requirements of subpart M of this part.

§ 92.601 Regional allocation of funds.

Unless HUD determines for administrative convenience based on the amount of HOME funds available to hold a nationwide competition, HOME funds will be allocated to the HUD Field Offices responsible for the HOME Indian program on the following basis:

(a) Each Field Office will be allocated a minimum of $250,000 as a base amount.

(b) HOME funds remaining after the base amount is subtracted will be allocated to each Field Office as follows:

(1) Forty percent of the funds will be allocated based upon each Field Office's share of the total eligible Indian population;

(2) Forty percent of the funds will be allocated based upon each Field Office's share of the total extent of poverty among the eligible Indian population; and

(3) Twenty percent of the funds will be allocated based upon each Field Office's share of the total extent of overcrowded housing among the eligible population.

(c) Data used for allocation of funds will be based upon the eligible Indian population of Indian tribes that are determined to be eligible 90 days before the beginning of each fiscal year. The data must be the most recent data available from sources referable to the same point or period in time.

§ 92.602 Competition.

The selection of projects for funding will be based on the relative adequacy of applications in addressing locally determined need. Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively. The requirements applicable to HOME funds awarded to Indian tribes are identified below.

§ 92.603 Housing strategy.

Indian tribes are not required to submit a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project(s) will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

§ 92.604 Criteria for selection.

There are four categories of projects that may be funded under the HOME Indian program: housing rehabilitation (moderate and substantial), acquisition of housing, new housing construction, and tenant-based rental assistance. Each project must be evaluated using the following three criteria:

(a) *Project need and design.* The degree to which the proposed project addresses the housing need(s) of the Indian tribe as identified in the application and through other information available to HUD, and the degree to which the proposed project is feasible while maximizing benefits to low income families.

(b) *Planning and implementation.* The degree to which the financial, administrative, and legal actions necessary to undertake the proposed project have been considered and addressed in the application, and the degree to which the Indian tribe has the administrative staff to successfully carry out the project.

(c) *Leveraging.* The degree to which other sources of assistance, including mortgage insurance, state funds, and private contributions, are used in

conjunction with HOME funds to carry out the proposed project.

§ 92.605 Deadline and other information.

The NOFA will describe the maximum points for each of the selection criteria and any special factors to be evaluated in awarding points under the selection criteria. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition and any maximum amount of individual awards.

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§ 92.606 Certifications.

The following certifications must accompany an application submitted in response to a NOFA:

(a) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.634;

(b) A certification that the Indian tribe will use HOME funds in compliance with all requirements of this part;

(c) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(d) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by 24 CFR part 87.

(e) The certification with regard to debarment and suspension required by 24 CFR part 24, appendix A.

Eligible Activities and Affordability

§ 92.610 Income determinations.

Whenever an Indian tribe makes a determination under this part based on family income or adjusted family income, it must use the definitions of *annual income, adjusted income, monthly income,* and *monthly adjusted income,* as those terms are defined in part 913 of this title.

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§ 92.611 Eligible activities.

(a) *Eligible activities.* (1) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 92.612.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

(3) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before an Indian tribe commits HOME funds to the project is new construction for purposes of this part.

(4) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding a unit beyond the existing walls, in which case, the project is new construction for purposes of this part.

(b) *Forms of assistance.* An Indian tribe may invest HOME funds as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each Indian tribe has the right to establish the terms of assistance, subject to the requirements of this part.

(c) *Termination before completion.* If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to the Indian tribe's HOME account.

§ 92.612 Eligible costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the Indian tribe and the Model Energy Code referred to in § 92.621;

(2) For rehabilitation, costs to meet the applicable rehabilitation standards of the Indian tribe or correcting substandard conditions (minimally the housing quality standards at § 882.109 of this title), to make essential improvements including energy-related repairs or improvements, improvements necessary to permit the use by handicapped persons, and the abatement of lead-based paint hazards, as required by § 92.636, and to repair or replace major housing systems in danger of failure; and

(3) For both new construction and rehabilitation, costs to demolish existing structures and for improvements to the project site that are in keeping with improvements of surrounding, standard projects, and costs to make utility connections.

(4) For new construction the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the Indian tribe's local HOME account.

(b) *Acquisition costs.* Costs of acquiring improved or unimproved real property.

(c) *Related soft costs.* Other reasonable and necessary costs incurred by the owner and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees;

(3) Costs of a project audit that the Indian tribe may require with respect to the development of a specific project; and

(4) Costs to provide information services.

(d) *Relocation costs.* Costs of relocation payments and other relocation assistance for permanently and temporarily relocated individuals, families, businesses, private nonprofit organizations, and farm operations where assistance is required under § 92.634 (b) or (c) or determined by the Indian tribe to be appropriate under § 92.634(d).

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance payments made to provide tenant-based rental assistance for a family.

(f) *Administrative costs.* Administrative costs of the Indian tribe not to exceed 15 percent of the HOME funds provide to the Indian tribe.

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§ 92.613 Tenant-based rental assistance.

(a) *General.* An Indian tribe may use HOME funds for tenant-based rental assistance only if the Indian tribe selects families from the waiting list of an IHA operating within the jurisdiction of the Indian tribe, in accordance with the IHA's preferences established under § 905.313 of this title. The Indian tribe may select eligible families currently residing in units that are designated for rehabilitation under the Indian tribe's HOME program without requiring that the family be placed on the waiting list. Families so selected may use the tenant-based assistance in the rehabilitated unit or in other qualified housing.

(b) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section. The Indian tribe may operate the program, itself, or may contract with an IHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

(c) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between an Indian tribe and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between an Indian tribe and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(d) *Rent reasonableness.* The Indian tribe must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(e) *Lease requirements.* The lease must comply with the requirements in § 92.622 (a) and (b) of this part.

(f) *Maximum subsidy.* (1) The amount of the monthly assistance that an Indian tribe may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the Indian tribe and 30 percent of the family's monthly adjusted income.

(2) The Indian tribe must establish a minimum tenant contribution to rent.

(3) The Indian tribe's rent standard for a unit size may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the Indian tribe adopts its rent standard amount) for the unit size. (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under § 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole IHA jurisdiction.) An Indian tribe may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(g) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the performance requirements set forth in § 882.109 of this title. In addition, the housing must meet the acceptability criteria set forth in § 882.109 of this title, except for such variations, as are proposed by the Indian tribe and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(h) *Use of Section 8 assistance.* In any case where assistance under section 8 of the United States Housing Act of 1937 becomes available to an Indian tribe, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.614 Qualification as affordable housing and income targeting: Rental housing.

(a) *Rent limitation.* A rental housing project (including the non-owner-occupied units in housing purchased with HOME funds in accordance with § 92.611) qualifies as affordable housing under this part only if the project:

(1) Bears rents not greater than the lesser of—

(i) The fair market rent for existing housing for comparable units in the area as established by HUD under § 888.111 of this title, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or Indian tribe must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under paragraph (a)(1)(ii) of this section;

(2) Has not less than 20 percent of the units—

(i) Occupied by very low-income families who pay as a contribution toward rent (excluding any federal, state, or tribal rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by HUD. To obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or Indian tribe multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant, or

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or Indian tribe must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

(3) Is occupied only by households that qualify as low-income families;

(4) Is not refused for leasing to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document; and

(5) Will remain affordable, according to binding commitments satisfactory to HUD, for not less than the appropriate period, beginning after project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership.

Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds:	
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The Indian tribe must review and approve rents proposed by the owner for units with "flat rents," i.e., units subject to the maximum rent limitations in paragraph (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in low-income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the Indian tribe annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for low-income units is subject to the provisions of outstanding leases; in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent not less than 30 percent of the family's adjusted monthly income, as recertified annually.

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section.

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§ 92.615 Qualification as affordable housing: Homeownership.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing only if the housing:

(1)(i) Has an initial purchase price that does not exceed the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act. For a cooperative unit, the purchase price for a cooperative share may not exceed the balance remaining after subtracting from the 1-family mortgage limit an amount equal to the blanket mortgage covering the cooperative development which is attributable to this cooperative unit; and

(ii) Has an estimated appraised value after repair needed to meet property standards in § 92.621 that does not exceed the appropriate mortgage limit described in paragraph (a)(1)(i) of this section;

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;

(3) Is made available for initial purchase only to first-time homebuyers; and

(4) Is made available for subsequent purchase only—

(i) To a low-income family that will use the property as its principal residence; and

(ii) At a price consistent with guidelines that are established by the Indian tribe and determined by HUD to be appropriate—

(A) To provide the owner with a fair return on investment, including any improvements, and

(B) To ensure that the housing will remain affordable to a reasonable range of low-income homebuyers for a period of 20 years for newly constructed housing or otherwise for 15 years. Housing remains affordable if the subsequent purchaser's monthly payments of principal, interest, taxes, and insurance do not exceed 30 percent of the gross income of a family with an income equal to 75 percent of median income for the area, as determined by HUD with adjustments for smaller and larger families.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act (see 24 CFR 201.10, 203.18, 203.18a, 203.18b, and 234.27); and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

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Project Requirements

§ 92.620 Maximum per-unit subsidy amount.

The amount of HOME funds that an Indian tribe may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 905.213. These total development cost standards are available from HUD Indian Field

Offices. For a project using a combination of HOME and the federal low-income tax credit, the applicable total development cost standards are reduced by the per unit net proceeds from any sale of the tax credit and by the per unit present discounted cash value of the stream of the project owner's share of the tax credit based on a discount rate equal to the 10–year Treasury note rate.

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§ 92.621 Property standards.

Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The Indian tribe must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39. Housing for homeownership that is to be rehabilitated after transfer of an ownership interest must be free from any defects that pose a danger to health or safety before transfer of the ownership interest, and must meet the applicable property standards not later than 2 years after the transfer.

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§ 92.622 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with tribal law (or state law, which may apply if the Indian tribe is not exercising recognized powers of self-government);

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, or tribal law (or state law, which may apply if the Indian tribe is not exercising recognized powers of self-government); or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(d) *Maintenance and replacement.* An owner of rental housing assisted with HOME funds must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) *Tenants selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that—

(1) Are consistent with the purpose of providing housing for very low-income and low-income families,

(2) Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease,

(3) Give reasonable consideration to the housing needs of families that would have a preference under § 960.211 (Federal selection preferences for admission to Public Housing) of this title; and

(4) Provide for—

(i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

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§ 92.623 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOME funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity (which may be an entity established, but not controlled, by the religious organization). The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

§ 92.624 Limitation on the use of HOME funds with FHA mortgage insurance.

When HOME funds are to be used in connection with housing in which acquisition, new construction, or rehabilitation is financed with a mortgage insured by HUD under chapter II of this title, then, for rental housing, the period that the project must remain affordable as provided in binding commitments meeting the requirements of by § 92.614(a)(5) or, for homeownership, the applicable period specified in the Indian tribe's guidelines

established under § 92.615(a)(4)(ii), must be equal to the term of the HUD-insured mortgage.

Other Federal Requirements

§ 92.630 Equal opportunity.

(a) *General.* No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(b) *Indian Civil Rights Act.* The Indian Civil Rights Act (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. The Indian Civil Rights Act (ICRA) applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. In addition, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex, or national origin in the sale or rental of housing, and Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), which provides for equal opportunity in housing, do not apply to Indian tribes exercising recognized powers of self-government. Indian tribes that do not exercise recognized powers of self-government must make HOME funds available in accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Executive Order 11063.

§ 92.631 Indian preference.

(a) *Applicability.* HUD has determined that projects under subpart M of this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant entered into for the benefit of Indians shall require that, to the greatest extent feasible—

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or subcontracts be given to "Indians." That Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the federal government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the federal government as eligible for services from the Bureau of Indian Affairs.

(b) *Preference requirements in procurement*—(1) *Preference by contractors and subcontractors.* The methods of procurement set forth in § 92.632 incorporate procedures for implementing preference for Indians, Indian-owned economic enterprises, and Indian organizations in contracting, subcontracting, training, and employment.

(2) *Preference by Indian tribes.* (i) To the greatest extent feasible, Indian tribes shall, in the conduct of their own operations, adhere to the requirements regarding preference in contracting. Where the provision of preference is determined by an Indian tribe to be infeasible, the Indian tribe shall document in writing the basis for its findings, shall maintain for three years the documentation in its files for HUD review, and shall provide HUD with a copy of the determination within 20 days of its issuance.

(ii) To the greatest extent feasible, preference shall be given to qualified Indians for employment or training for Indian tribe staff positions. Each Indian tribe shall document the method and justification used in selecting individuals for employment or training. A finding by HUD that an Indian tribe has not provided preference to the greatest extent feasible to Indians in selecting individuals for employment or training shall be grounds for HUD to invoke its remedies under this.

(c) *Other preference requirements*—(1) *Use of nonfederal funds.* When both HOME and nonfederal funds are used for a project, the work to be accomplished with the funds should be separately identified, and HUD's Indian preference regulations must be applied to the work financed by HUD. If the funds cannot be separated, these Indian preference regulations will apply to the total project.

(2) *Monitoring.* Each Indian tribe shall be responsible for monitoring Indian preference implementation in its contracting, subcontracting, employment, and training. Should incidents of noncompliance be found to exist, the Indian tribe shall take appropriate remedial action.

(3) *Off-site activities.* Preference in contracting, subcontracting, employment, and training applies regardless of where the contract work is performed.

(4) *Locally-imposed requirements.* Each Indian tribe should include in the Invitation For Bids (IFB) or Request For Proposals (RFP) any applicable locally imposed preference requirements properly enacted by the tribal governing body, as adopted by the Indian tribe and approved by HUD, or should advise bidders to contact the tribal governing body to determine any applicable preference requirements. However, in no case may an Indian tribe authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian

organizations, based on particular tribal affiliation or membership.

(d) *Required contract clause.* The following language shall be included in any contracts or subcontracts in connection with housing assisted with HOME funds:

Section 7(b) Clause

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the Indian tribe or HUD that any party to this contract is in violation of the section 7(b) clause, the party shall at the direction of the Indian tribe, take appropriate remedial action pursuant to the contract.

(e) *Eligibility for Indian preference.* (1) An applicant seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership to the Indian tribe or contractor. Proof of Indian ownership shall include, but shall not be limited to:

(i) Certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. Indian tribes shall accept the certification of a tribe that an individual is a member.

(ii) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(2) An applicant seeking to qualify for preference in employment and training shall submit, to the Indian tribe or contractor, certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. Indian tribes and contractors shall accept the certification of a tribe that an individual is a member.

(3) An applicant seeking a contract or a subcontract shall submit evidence sufficient to demonstrate to the satisfaction of the Indian tribe or the contractor, as appropriate, that the applicant has the technical, administrative, and financial capability to perform contract work of the size and type involved, and within the time provided, under the proposed contract. An applicant seeking employment and training shall submit evidence sufficient to demonstrate to the satisfaction of the Indian tribe or the contractor, as appropriate, that the applicant possesses the qualifications required for employment or training.

(4) An Indian tribe may state in its solicitation that bidders must submit evidence of eligibility within a specified time period before a scheduled bid opening.

(5) An Indian tribe may use lists of pre-qualified Indians, Indian enterprises, or Indian organizations, provided that the Indian tribe does not preclude potential bidders from qualifying during the solicitation period.

(6) If an Indian tribe or contractor determines that an applicant is ineligible for Indian preference, the Indian tribe or contractor shall so notify the applicant in writing before the award of the contract or before filling the position or providing the training sought by the applicant.

(f) *Review procedures for complaints alleging inadequate or inappropriate provision of preference.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this subpart, including alternate methods enacted and approved in the manner described in this subpart.

(1) Each complaint (including complaints against an Indian tribe) shall be in writing, signed, and filed with the Indian tribe. Complaints may be filed only by a person or business entity claiming to have been adversely affected by the actions or inactions of an Indian tribe, a contractor or subcontractor in connection with the provision of preference to Indians in contracting, subcontracting employment or training.

(2) A complaint must be filed with the Indian tribe no later than 20 days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the Indian tribe shall promptly stamp the date and time of receipt upon the complaint, acknowledge its receipt in writing to the complainant within five (5) days, and shall investigate, and within 15 days shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. In all cases, but especially where the complaint indicates that expeditious action is required to preserve the rights of the complaining party, the Indian tribe shall endeavor to resolve the matter as expeditiously as possible. If noncompliance with Indian preference requirements is found to exist, the Indian tribe shall take appropriate steps to remedy the noncompliance and, if necessary, to amend its procedures so as to be in compliance. If the matter is not resolved to the satisfaction of the complaining party, or if the Indian tribe has failed to communicate with the complaining party in an effort to resolve the complaint within 15 days following the Indian tribe's receipt of a complaint, the complaining party may file a written complaint with the appropriate Indian Field Office of HUD. In any event, complaints filed with HUD must be received within six months after the occurrence of the alleged adverse action by the Indian tribe, contractor or subcontractor. The address of the Indian Field Office and the name of the appropriate Indian program officer shall be included in the initial communication from the Indian tribe acknowledging receipt of the complaint.

(4) Upon receipt of a written complaint, the HUD Indian Field Office will request that the Indian tribe provide a written report setting forth all relevant facts, including, but not limited to:

(i) The date the complaint was filed with the Indian tribe;

(ii) The name of the complainant;

(iii) The nature of the complaint, including the manner in which Indian preference was or was not provided; and

(iv) Actions taken by the Indian tribe in addressing or resolving the complaint.

The Indian tribe shall provide copies of its report and all relevant documents concerning the complaint to HUD within ten days after receipt of the HUD request.

(5) Upon receipt of the Indian tribe's report, the HUD Indian Field Office will determine whether the actions taken by the Indian tribe comply with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act, and with Indian preference requirements under this subpart. Notification of the Field Office's determination shall be provided to the Indian tribe and to the complaining party, orally or in writing, no later than 30 days following HUD's receipt of the complaint. If the notice is oral, it shall be promptly confirmed in writing. If the complaining party's alleged injury will occur during this 30-day period, the HUD Indian Field Office will make a good faith effort to make its

determination before the occurrence of such injury (e.g., contract award).

(6) Where the HUD Indian Field Office determines on the basis of the facts provided by the Indian tribe and on the basis of other available information that there has been noncompliance with Indian preference requirements, the Field Office shall instruct the Indian tribe to take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance.

(7) The decision of the HUD Indian Field Office may be appealed to the Assistant Secretary for Public and Indian Housing. The decision of the Assistant Secretary for Public and Indian Housing shall constitute final agency action for purposes of the Administrative Procedure Act.

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§ 92.632 Methods of procurement.

(a) *General*—(1) *Method of providing Indian preference.* This section outlines specific methods an Indian tribe must follow in the procurement of services and property. These methods provide, to the greatest extent feasible, preference to Indian organizations and Indian-owned economic enterprises in contracting and subcontracting, and to Indians in employment and training. An Indian tribe that exercising recognized powers of self-government that enacts an alternate method of providing Indian preference within its jurisdiction may request HUD to approve the alternate method as meeting the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act for use in the HUD-assisted Indian housing program. Alternate methods that provide for a tribal preference will not be approved. HUD's review of alternate methods of providing preference will include the extent to which the proposed method minimizes the risk of nonperformance, promotes competition, assures cost containment, reduces administrative burdens and furthers local priorities and objectives while providing effective Indian preference.

(2) *Requirements applicable to all contracting.* (i) In all cases, the Indian tribe shall include in the Invitation For Bids (IFB) or Request For Proposals (RFP) a description of the contract and subcontract selection procedures which are to be employed. A finding by an Indian tribe either that a subcontract was awarded without using the procedure required by the Indian tribe, or that the contractor falsely represented that subcontracts would be awarded to Indian enterprises or organizations, shall be grounds for termination of the contract between the Indian tribe and its contractor, or for other penalties as appropriate. These grounds for termination of the contract or for the imposition of other penalties shall be set out in the IFB or RFP and shall be included in each contract and subcontract.

(ii) Each IFB and RFP shall state whether the Indian tribe maintains lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to developers, contractors, and subcontractors to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

(iii) The Indian tribe shall require a statement from all prospective contractors or developers describing how they will provide Indian preference in the award of subcontracts. Each Indian tribe shall describe in its IFB or RFP:

(A) what provisions each prospective developer or contractor must include in its statement; and

(B) The factors that will be used by the Indian tribe in judging the statement's adequacy.

Any bid or proposal that fails to include the required statement shall be rejected as nonresponsive. An Indian tribe may require that a comparable statement be provided by subcontractors to their contractors, and may require a contractor to reject any bid or proposal by a subcontractor that fails to include the statement, as specified by the Indian tribe in the IFB or RFP.

(iv) Each contractor or subcontractor shall submit a certification (supported by credible evidence) to the Indian tribe in any instance where the contractor or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The Indian tribe may examine the evidence submitted and may accept or reject the certification.

(b) *Small purchase procedures*—(1) *General.* As an alternative to the procurement procedures specified in paragraphs (c) and (d) of this section, this paragraph provides for simplified, informal procurement methods applicable to an Indian tribe's procurement of services or property that do not cost more than $25,000 in the aggregate (paragraph (b)(2) of this section) or for procurement of services or property that does not cost more than $2,000 (paragraph (b)(3) of this section).

(i) The provisions of § 92.631 concerning Indian preference apply to small purchase procedures, except as otherwise specified in this section. In providing preference, an Indian tribe shall seek maximum participation by Indian-owned economic enterprises and Indian organizations and shall to the extent available, refer to lists of qualified Indian supply sources.

(ii) The Indian tribe shall require a statement from all contractors agreeing to provide Indian preference in subcontracting, training and employment and shall specify the method to be used.

(iii) An Indian tribe must document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the Indian tribe must also include as part of its documentation a statement explaining the reasons for the lack of Indian participation.

(2) *Methods of procurement—$25,000 or less.* For purchases aggregating no more than $25,000, an Indian tribe may use the methods set forth in this paragraph or the more formal procedures set forth in paragraphs (c) and (d) of this section.

(i) *Solicitation.* (A) An Indian tribe may solicit quotations by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of the item to be procured with sufficient specificity, of the time within which quotations must be submitted, and of the information that must be submitted with each quotation. Quotations must be obtained in writing. A written quotation may include a confirmation of a previous oral quotation only if it is submitted within ten days of the oral quotation, or by the closing date for submitting quotations, as determined by the Indian tribe.

(B) An Indian tribe shall attempt to obtain quotations from a minimum of three qualified sources in order to promote competition to the maximum extent practicable. Fewer than three quotations is acceptable when the Indian tribe has attempted but has been unable to obtain a sufficient amount of competitive quotations. In unusual circumstances, the Indian tribe may accept the sole quotation received in response to a solicitation. In all cases, an Indian tribe shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the contract is to be awarded based upon price and fixed specifications, the Indian tribe shall award the contract to the qualified

Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Indian-owned economic enterprise or organization is within 10 percent of the quotation of the lowest responsive quotation from any qualified source, award shall be made to the source with the lowest quotation.

(B) Where the contract is to be awarded based on factors other than price alone, the Indian tribe shall issue a request for proposals/quotations by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each proposal/quotation. The solicitation shall identify all factors to be considered, including price or cost. The Indian tribe shall set aside 15 percent of the total number of available rating points for the provision of Indian preference. Award shall be made to the best proposal/quotation, as determined under the rating system.

(3) *Methods of procurement—$2,000 or less.* For purchases aggregating $2000.00 or less, an Indian tribe shall follow the procedures under paragraph (b)(2) of this section (methods of procurement—$25,000 or less), except that:

(i) Oral quotations are acceptable, subject to documentation by the Indian tribe; and

(ii) The Indian tribe may develop alternative methods of providing Indian preference, which must be in writing, must promote maximum participation by Indian organizations and Indian-owned economic enterprises, and must be approved by HUD.

(c) *Procurement by sealed bids (Invitations for Bid).* (1) Preference in the award of contracts and subcontracts that are let under a sealed bid/Invitation for Bids (IFB) process (e.g., construction contracts, material supply contracts) shall be provided as follows:

(i) The IFB may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The IFB should, however, not be so restricted unless the Indian tribe has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or organizations are likely to submit responsive bids. If two or more (or at the Indian tribe's option, a number greater than two specified in the IFB) qualified Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned economic enterprises or organizations submit responsive bids, the Indian tribe shall reject all bids, and shall readvertise the IFB in accordance with paragraph (c)(1)(ii) of this section. In unusual circumstances and subject to HUD approval, the Indian tribe may accept a single bid, e.g., the Indian tribe determines that the single bid received is of a fair and reasonable price, or the Indian tribe determines that delays caused by readvertising would subject the project to higher construction costs, or the Indian tribe determines that the bid is fair and reasonable.

(ii) If the Indian tribe prefers not to restrict the IFB as described in paragraph (c)(1)(i) of this section; or if an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to an IFB under paragraph (c)(1)(i) of this section; or if a single bid is not accepted and approved; the Indian tribe or contractor shall advertise for bids inviting responses from non-Indian as well as Indian-owned economic enterprises and Indian organizations. Award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid if that bid:

(A) Is within the maximum total contract price established for the specific project or activity for which bids are being taken and

(B) Is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder.

"X" is determined as follows:

	X=lesser of
When the lowest responsive bid is less than $100,000.	10% of that bid, or $9,000.
When the lowest responsive bid is:	
At least $100,000, but less than $200,000.	9% of that bid, or $16,000.
At least $200,000, but less than $300,000.	8% of that bid, or $21,000.
At least $300,000, but less than $400,000.	7% of that bid, or $24,000.
At least $400,000, but less than $500,000.	6% of that bid, or $25,000.
At least $500,000, but less than $1 million.	5% of that bid, or $40,000.
At least $1 million, but less than $2 million.	4% of that bid, or $60,000.
At least $2 million, but less than $4 million.	3% of that bid, or $80,000.
At least $4 million, but less than $7 million.	2% of that bid, or $105,000.
$7 million or more	1½% of the lowest responsive bid, with no dollar limit.

If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(2) [Reserved]

(d) *Procurement by competitive proposals (Request for Proposals).* (1) Preference in the award of contracts and subcontracts that are let under competitive proposals/Request for Proposals (RFP) process (e.g., professional service contracts) shall be provided as follows:

(i) The RFP may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The RFP should, however, not be so restricted unless the Indian tribe has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or Indian organizations are likely to submit responsive proposals. If two (or, at the Indian tribe's option, a number greater than two specified in the RFP) qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal. If fewer than the minimum required number of qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, the Indian tribe shall reject all proposals and shall readvertise the RFP in accordance with paragraph (d)(1)(ii) of this section. In unusual circumstances and subject to HUD approval, the Indian tribe may accept a proposal that is the only one received, e.g., where the Indian tribe determines that delays caused by readvertising would cause higher costs, or where the Indian tribe determines that the proposal is fair and reasonable. The Indian tribe shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance the Indian tribe places on each evaluation factor and subfactor. The award shall be made to the qualified Indian-owned economic enterprise or Indian organization that has submitted the most responsible proposal if the proposal is within the maximum total contract price established for the specific project or activity.

(ii) If the Indian tribe prefers not to restrict the RFP solicitation as described in paragraph (d)(1)(i) of this section; or if an insufficient number of qualified Indian enterprises or organizations satisfactorily respond under that procedure; or if a single proposal is not accepted and approved; the Indian tribe or contractor shall advertise for proposals inviting responses from non-Indian as well as Indian-owned economic enterprises and Indian organizations. The Indian tribe shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance an Indian tribe places on each evaluation factor and subfactor. Notification that Indian preference is applicable to this procurement shall be included in the RFP solicitation. The award shall be made to the most responsive proposal if the proposal is within the maximum total contract price established for the specific project or activity.

(2) An Indian tribe shall set aside 15 percent of the total number of available rating points for the provision of Indian preference in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be specified in the RFP.

(3) An Indian tribe may require that contractors solicit subcontractors by using a RFP based on a point system, and that contractors set aside 15 percent of the available rating points for the provision of Indian preference in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors.

(e) *Procurement by non-competitive Proposals.* An Indian tribe may award a contract without satisfying the small purchase, sealed bids or competitive proposals requirements for competition only if award under these methods of procurement is infeasible, and one of the following applies:

(1) The exigencies require immediate delivery of the articles or performance of the service;

(2) Only one source of supply is available and the purchasing or contracting officer of the Indian tribe has so certified;

(3) After solicitation of a number of sources, competition is determined inadequate; or

(4) HUD has specifically authorized this method.

Cost analysis, i.e., verifying the proposed cost data, and the evaluation of the specific elements of costs and profits, is required.

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§ 92.633 Environmental review.

The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR part 50. That assessment or review will be performed by HUD in accordance with 24 CFR part 50.

§ 92.634 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the Indian tribe must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of—

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and 49 CFR part 24.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, private nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*1*) The date of the submission of an application to the Indian tribe or HUD, if the applicant has site control and the application is later approved; or

(*2*) The date the Indian tribe approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the Indian tribe or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of—

(*i*) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(*ii*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of

gross household income, if the tenant is not low-income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either—

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*ii*) Other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person, if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal or tribal law (or state law, which may apply if the Indian tribe is not exercising recognized powers of self-government), or other good cause, and the Indian tribe determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The Indian tribe may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The Indian tribe may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The Indian tribe may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by tribal law (or state law, which may apply if the Indian tribe is not exercising recognized powers of self-government), the Indian tribe must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(f) *Appeals.* A person who disagrees with the Indian tribe's determination concerning whether the person qualifies as a *displaced person,* or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the Indian tribe.

(g) *Responsibility of Indian tribe.* (1) The Indian tribe must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the Indian tribe to comply.

(2) The cost of required relocation assistance is an eligible project cost. This cost also may be paid from tribal funds, or funds available from other sources.

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§ 92.635 Labor.

(a) *General.* Any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under this part must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), will be paid to all laborers and mechanics employed in the development of affordable housing involved, and such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332). Indian tribes, contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Indian tribes must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

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§ 92.636 Lead-based paint.

Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, Indian tribes are responsible for testing and abatement activities.

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§ 92.637 Conflict of interest.

(a) *Applicability.* (1) The conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110 apply to the procurement of supplies, equipment, construction, and services by Indian tribes and their subrecipients.

(2) The provisions of this section apply to all cases not governed by 24 CFR 85.36 and OMB Circular A–110. These cases include the acquisition and disposition of real property and the provision of assistance by the Indian tribe, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which

authorize such assistance (e.g., rehabilitation of housing).[6]

(b) *Conflicts Prohibited.* The general rule is that no persons described in paragraph (c) of this section who have or had any functions or responsibilities with respect to activities assisted under this part, or who are in a position to participate in a decision, or gain inside information about such activities, may obtain a financial interest or benefit from these activities. Further, these persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and these persons may not, during their employment or tenure in office and for one year thereafter, have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the Indian tribe, or of any designated public agency, or subrecipient of the Indian tribe, receiving HOME funds.

(d) *Exceptions requiring HUD approval*—(1) *Threshold requirements.* Upon the written request of an Indian tribe, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the Indian tribe's program or project. An exception may be considered only after the Indian tribe has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the Indian tribe's attorney that the interest for which the exception is sought would not violate tribal laws on conflict of interest (or state law on conflict of interest, which may apply if the Indian tribe is not exercising recognized powers of self-government).

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the Indian tribe has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iii) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(iv) Whether undue hardship will result, either to the Indian tribe or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(v) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of tribal (or state) laws on conflict of interest would result, the prohibition does apply.

§ 92.638 Debarment and suspension.

As required by 24 CFR part 24, each Indian tribe must require participants in lower tier covered transactions to include the certification in appendix B of 24 CFR part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. An Indian tribe may rely on the certification, unless it knows the certification is erroneous.

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§ 92.639 Flood insurance.

(a) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the commitment.

(b) Indian tribes located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

Program Administration

§ 92.640 HOME account.

HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. The Indian tribe must establish a local account for repayment, interest and other return of investment of HOME funds. HUD will recapture HOME funds in the HOME account by the amount of:

(a) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(b) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(c) Any penalties assessed by HUD under § 92.652.

§ 92.641 HOME investment partnership agreement.

HOME funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement must ensure that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.642 Cash and Management Information System; disbursement of HOME funds.

(a) *General.* The Home account established in the United States Treasury is managed through HUD's Cash and Management Information (C/MI) System for the HOME Investment Partnerships Program. The C/MI System is a computerized system which manages, disburses, collects, and reports information on the use of HOME funds in the United States Treasury account.

(b) *Project set-up.* (1) After HUD completes any environmental review

[6] See § 92.645 concerning the availability of OMB Circulars.

required by part 50 of this title and the Indian tribe executes the HOME Investment Partnership Agreement and submits the appropriate banking and security documents, the Indian tribe may identify (set up) specific investments in the C/MI System. Investments that require the set-up of projects in the C/MI System are the acquisition, new construction, or moderate or substantial rehabilitation of real property, and investments of HOME funds to provide tenant-based rental assistance. Within 12 calendar days of project set-up, the Indian tribe is required to submit a Project Set-Up Report to HUD for each project set up in the C/MI System. Until an acceptable Project Set-Up Report is received and entered in the C/MI System, HOME funds for the project are not considered committed (as defined in § 92.2), and, therefore, are subject to recapture and reallocation to the extent authorized by § 92.644.

(2) If the Project Set-Up Report is not received within 20 days of the project set-up call, the project will be cancelled automatically by the C/MI System. In addition, a project which has been committed in the C/MI System for 12 months without an initial disbursement of funds will be automatically cancelled by the C/MI System.

(c) *Disbursement of HOME funds.* (1) After information from an acceptable Project Set-Up report is entered into the C/MI System, HOME funds may be drawn down from the United States Treasury account for the project by the Indian tribe by electronic funds transfer. The funds will be deposited in the local account of the HOME account of the Indian tribe within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the United States Treasury account is conditioned upon the submission of satisfactory information by the Indian tribe about the project or tenant-based rental assistance and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the Cash and Management Information System. Copies of these forms and issuances may be obtained from HUD Field Offices.

(2) The Indian tribe must comply with Treasury Circular No. 1075 (31 CFR part 205). Interest earned on grant advances belongs to the United States Treasury and must be remitted promptly, but at least quarterly, to HUD, except that the Indian tribe may retain interest amounts up to $100 a quarter for administrative expenses.

(3) HOME funds in the local account of the HOME account must be disbursed before requests are made for HOME funds in the United States Treasury account.

(4) An Indian tribe will be paid on an advance basis provided it complies with the requirements of this part.

(5) If a project is terminated before its completion, whether voluntarily by the Indian tribe or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the Indian tribe to its HOME account. If the HOME funds were disbursed from the Treasury account, the amount must be paid to the Treasury account; if the HOME funds were disbursed from the local account, the amount must be paid to the local account. If the amount is not repaid, the Indian tribe will be subject to actions under §§ 92.650 to 92.652.

(d) *Payment certification.* As post-documentation of each drawdown of funds from the United States Treasury account, an Indian tribe must submit to HUD a payment certification, for each drawdown, in the form required by HUD. If the payment certification is not received within 10 calendar days of the drawdown, the Indian tribe will be suspended from setting up new projects until the payment certification is received by HUD.

(e) *Submission of project completion reports.* A Project Completion Report must be submitted to HUD within 120 days of the final drawdown request for the project. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further project set-ups for the Indian tribe. Project set-ups will remain suspended until a satisfactory Project Completion Report is received and entered into the C/MI System.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.643 Repayment of investment.

(a) Housing assisted with HOME funds that does not meet the affordability requirements for the period specified in § 92.614 or § 92.615, as applicable, must be repaid in accordance with paragraph (b) of this section.

(b) Any repayment of HOME funds (including repayment required if the housing no longer qualifies as affordable housing), and any payment of interest or other return on the investment of HOME funds, that is made before grant close out must be deposited in the Indian tribe's HOME account and used in accordance with the requirements of this subpart. An Indian tribe may retain repayments, interest, and other return on investment of HOME funds that are made after grant closeout if the Indian tribe agrees to use the funds for eligible activities.

§ 92.644 Indian tribe responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The Indian tribe is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of subrecipients, or contractors does not relieve the Indian tribe of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., for-profit housing developer, nonprofit organization, homeowner, contractor, or IHA) the Indian tribe must enter into a written agreement with the entity ensuring compliance with the requirements of this part. A subrecipient or contractor must also enter into a written agreement before it disburses funds to any entity. The agreement remains in effect during the period for affordability under § 92.614 or § 92.615, as applicable, or if the entity is a subrecipient, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement must include provisions concerning the following items:

(1) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the Indian tribe effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.614 or § 92.615, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a contractor or subrecipient, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the Indian tribe or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subrecipient, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 92.645.

(5) *Project requirement.* The agreement must require compliance with project requirements in §§ 92.620 through 92.623 of this part, as applicable

in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all federal laws and regulations described in §§ 92.630 through 92.639.

(8) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 92.623 for the use of HOME funds by religious organizations.

(9) *Requests for disbursements of funds.* The agreement must specify that the entity may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(10) *Reversion of assets.* If the entity is a subrecipient, the agreement must specify that upon expiration of the agreement, the entity must transfer to the Indian tribe any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(11) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the Indian tribe in meeting its recordkeeping and reporting requirements.

(12) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the Indian tribe or the intended beneficiaries. In addition, the agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subrecipient, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(13) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required by the Indian tribe under § 92.614 or § 92.615.

(d) *Monitoring.* The Indian tribe is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds from the Indian tribe to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the Indian tribe must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. For multifamily housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental housing containing one- to four-dwelling units, an on-site review must be made once within each two-year period. The results of each review must be included in the Indian tribe's performance report.

(2) Not less than annually, the Indian tribe must review the performance of each contractor and subrecipient.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.645 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the Indian tribe and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.35, 85.36, 85.43, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 and the following requirements of OMB Circular No. A–110 apply to subrecipients receiving HOME funds that are private nonprofit organizations: Attachment B; attachment F; attachment H, paragraph 2; and attachment 0.

(Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number. There is a limit of two free copies.))

§ 92.646 Audit.

Audits must be conducted in accordance with 24 CFR part 44 and OMB Circular A–133.[7]

§ 92.647 Closeout.

(a) A grant will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) Project Completion Reports for all projects using funds to be closed out have been submitted and entered into the C/MI System. (Based on the data in the C/MI System, HUD will prepare the Closeout Report.);

(3) The Indian tribe has been reviewed and audited and HUD has determined that all requirements, except for affordability, have been met or all monitoring and audit findings have been resolved.

(i) The Indian tribe's most recent audit report must be received by HUD. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the Indian tribe agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the Indian tribe's next single audit and that the Indian tribe may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the Indian tribe by the HUD Field Office must include verification of C/MI System data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between C/MI System data and Indian tribe records.

(b) The Closeout Report contains the final data on the funds and must be signed by the Indian tribe and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds, required by paragraph (a)(4)(i) of this section; and

(2) A provision requiring the Indian tribe to continue to meet the requirements applicable to housing projects for the period of affordability specified in § 92.614 or § 92.615, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 92.643, if the housing fails to remain affordable for the required period.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.648 Recordkeeping.

(a) *General.* Each Indian tribe must establish and maintain sufficient records to enable HUD to determine whether the Indian tribe has met the requirements of this part. Records must be kept in a manner that identifies the source of funds of each project. At a minimum, the following records are needed:

(1) Program requirements:

(i) Records providing a full description of each activity assisted with HOME funds, including its census tract location (if the activity has a geographical locus), the amount of HOME funds budgeted,

[7] See § 92.645 concerning the availability of OMB Circulars.

committed, and expended for the activity.

(ii) Records supporting the Indian tribe's certification under § 92.613 (tenant-based rental assistance; the waiting list; determinations of rent reasonableness; calculations of HOME subsidy for each tenant assisted).

(2) Project records:

(i) Records that demonstrate that each project meets the property standards in § 92.621.

(ii) Records that demonstrate that each rental housing project meets the requirements of § 92.614 for the required period of affordability. Records must be kept for each family assisted.

(iii) Records that demonstrate compliance with the requirements of § 92.622 for tenant and participant protections.

(iv) Records that demonstrate compliance with the requirements in § 92.615 for affordable housing: homeownership, including the initial purchase price and appraised value (after rehabilitation, if required) of the property. Records must be kept for each family assisted.

(3) Other federal requirements records:

(i) Records that demonstrate compliance with the Indian preference and methods of procurement requirements in §§ 92.631 and 92.632.

(ii) Records which demonstrate compliance with the requirements in § 92.634 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.634(c)(2)(i)(A), moving into the property on or after the date described in § 92.634(c)(2)(i)(A), and occupying the property upon completion of the project.

(iii) Records demonstrating compliance with labor requirements in § 92.635, including contract provisions and payroll records.

(iv) Records concerning lead-based paint under § 92.636.

(v) Records supporting requests for waivers of the conflict of interest prohibition in § 92.637.

(vi) Records of certifications concerning debarment and suspension required by § 92.638 and 24 CFR part 24.

(vii) Records demonstrating compliance with flood insurance requirements under § 92.639.

(4) Program administration records:

(i) Records concerning the local account of the HOME account, required to be established and maintained by § 92.640, including deposits, disbursements, and balances.

(ii) Records supporting requests for disbursements of HOME funds from the Treasury account and the local account, and other information required for the C/MI System under § 92.642.

(iii) Records indicating source and amounts of repayments, interest, and other return of investment of HOME funds.

(iv) Records of written agreements and monitoring required by § 92.644.

(v) Financial and related records required by § 92.645.

(vi) Records of audits and resolution of audit findings.

(b) *Period of record retention.* (1) Except as provided in paragraph (b)(2), (b)(3), or (b)(4) of this section, records must be retained for three years after closeout of the funds.

(2) If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified in paragraph (b)(2) of this section, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

(3) Records regarding project requirements (§§ 92.620 to 92.623) and other federal requirements that apply for the duration of the period of affordability (§§ 92.630 and 92.639), as well as the written agreement and inspection and monitoring reports must be retained for three years after the required period of affordability specified in § 92.614 or § 92.615, as applicable.

(4) Records covering displacements and acquisition must be retained for at least three years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.634.

(c) *Access to record.* (1) The Indian tribe must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable tribal laws (or state law, which may apply if the Indian tribe is not exercising recognized powers of self-government) regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, or any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the Indian tribes and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

§ 92.649 Performance reports.

(a) *Management reports.* Each Indian tribe must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report*—(1) *Submission.* An Indian tribe must submit an annual performance report on its HOME activities to the responsible HUD Field Office at such time as HUD may prescribe. Single copies of the report must be provided to the public upon request at no charge.

(2) *Elements of the annual performance report.* The report must contain such information and be in such form as HUD may prescribe, and must include at least the following:

(i) An assessment by the Indian tribe of the relationship of the activities carried out under its HOME Investment Partnerships Program to the objectives in its application;

(ii) An analysis of the extent to which HOME funds were distributed among different categories of housing needs identified in its application;

(iii) An assessment of the effectiveness of the efforts in providing the preferences and opportunities under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

(iv) Data on the total number of households (families and individuals) and business and nonprofit organizations displaced as a result of investments of HOME funds, including the cost of relocation payments (moving expenses and replacement housing), and the number and cost of real property acquisitions; and

(v) Data on the amount of repayments, interest, and other return on investment of HOME funds and the use of the funds for projects, including number of projects assisted, and characteristics of tenants and owners.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

Performance Reviews and Sanctions

§ 92.650 Performance reviews.

(a) *General.* HUD will review the performance of each Indian tribe in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the Indian tribe's records and reports, findings from on-site monitoring, audit reports, and information generated from the C/MI System. Where applicable, HUD may

also consider relevant information pertaining to an Indian tribe's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the Indian tribe. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the Indian tribe.

(b) *Standards for comprehensive performance review.* An Indian tribe's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the Indian tribe:

(1) Has committed the HOME funds in the United States Treasury account as required by § 92.640 and expended the funds in the United States Treasury account as required by § 92.640, and

(2) Has met the requirements of this part, particularly eligible activities and affordability.

§ 92.651 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.650 and in taking corrective and remedial actions.

(b) *Performance review.* (1) If HUD determines preliminarily that the Indian tribe has not met a requirement of this part, the Indian tribe will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the Indian tribe fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.652.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the Indian tribe to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME account in any amount not used in accordance with the requirements of this part; and

(vi) Suspending disbursement of HOME funds for affected activities.

(2) HUD may also—

(i) Change the method of payment from an advance to reimbursement basis; and

(ii) Take other remedies that may be legally available.

§ 92.652 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that an Indian tribe has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the Indian tribe's HOME account by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the Indian tribe's HOME account for activities affected by the failure to comply; or

(ii) Prohibit the Indian tribe from competing for HOME funds under § 92.604; *Provided, however,* That HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the Indian tribe.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 92.652; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

Dated: November 12, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-29094 Filed 12-13-91; 8:45 am]

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federal register

Monday
December 16, 1991

Part III

Department of Education

34 CFR Part 3

Official Seal and Insignias; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 3

Official Seal and Insignias

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing use of the Department's Official Seal by renaming the part to reflect designation by the Department of the official insignia of AMERICA 2000. This action is being taken to provide public notice of that designation and to specify authorized uses of that insignia.

EFFECTIVE DATE: These regulations take effect on December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Jaime Fernandez, U.S. Department of Education, 400 Maryland Avenue, SW., room 4125, FOB–6, Washington, DC 20202–2243. Telephone: (202) 401–3690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The regulations in 34 CFR part 3, entitled "Official Seal", advise staff and the public of allowable uses of the Department seal and establish the procedure for persons and organizations outside the Department to request permission to reproduce the Seal. These final regulations retitle part 3 as "Part 3—Official Seal and Insignias," include the AMERICA 2000 insignia as an official insignia of the Department, and establish authorized uses of the insignia.

AMERICA 2000 is designed to transform American education by the year 2000 through the implementation by States, local educational agencies, and communities of the six national educational goals adopted by the President and the Nation's governors. Use of the America 2000 insignia is intended to signify official participation in and support for AMERICA 2000's educational reform goals.

These final regulations place the existing provisions of part 3 into a subpart A entitled "Official Seal," and add a new subpart B entitled "Official Insignia—AMERICA 2000." The regulations would provide public notice that the AMERICA 2000 insignia is an official insignia of the Department and prohibit its unauthorized use.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on proposed regulations. However, since these regulations relate to agency management, the Secretary has determined, under 5 U.S.C. 5539a)(2), that notice and public comment on these regulations is not required. For the same reasons, a delayed effective date for these regulatory changes is found to be unnecessary in accordance with 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Part 3

Education Department, Seals and Insignia

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 5, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 3 of title 34 of the Code of Federal Regulations as follows:

1. The title of part 3 is revised to read as follows:

PART 3—OFFICIAL SEAL AND INSIGNIAS

2. The authority citation for part 3 continues to read as follows:

Authority: 20 U.S.C. 3472 and 3485, unless otherwise noted.

§ 3.4 [Amended]

3. In § 3.4, paragraph (b) is amended by removing the words "Deputy Under Secretary for Planning, Budget, and Evaluation" and adding, in their place, the words "Assistant Secretary for Management and Budget/Chief Financial Officer".

§ 3.4 [Amended]

4. In § 3.4, paragraph (e)(3) is amended by removing the words "Deputy Under Secretary for Management" and adding, in their place, the words "Assistant Secretary for Human Resources and Administration".

§§ 3.1 through 3.4 [Designated as Subpart A]

5. Sections 3.1 through 3.4 are designated as subpart A, a new subpart A heading is added, and a new subpart B is added to read as follows:

Subpart A—Official Seal

* * * * *

Subpart B—Official Insignia—AMERICA 2000

Sec.

Subpart B—Official Insignia—AMERICA 2000

§ 3.5 Scope.

This subpart provides public notice of the establishment of the AMERICA 2000 insignia as an official insignia of the Department of Education and establishes the Department's policy governing its authorized use.

§ 3.6 Policy.

The Department of Education has established the AMERICA 2000 insignia as the official insignia of AMERICA 2000, which seeks to transform American education and move our Nation toward the six national educational goals adopted by the President and the Nation's governors. The AMERICA 2000 insignia is primarily intended for use by officers and employees of the Department as well as States, local educational agencies, and communities participating in AMERICA 2000. While use of the insignia by States, local educational agencies, and communities participating in AMERICA 2000 is intended to convey association with and support for the educational reform goals of AMERICA 2000, it does not constitute Federal endorsement of each element of a State or local AMERICA 2000 insignia activity. Authorized uses of the insignia are set forth in § 3.8.

§ 3.7 Insignia description.

The AMERICA 2000 insignia is a triangle containing a stylized American flag, bordered at the bottom with the term "AMERICA 2000." The stripes in the triangle are blue (left side) and red (right side) and the term "AMERICA 2000" is blue and red corresponding to the color of the stripe immediately above each component of the term. The AMERICA 2000 insignia is reproduced in black and white below.

§ 3.8 Authorized uses.

(a) Except as provided in paragraph (b) of this section, the AMERICA 2000 insignia may be used only by—

(1) Officers and employees of the Department in connection with AMERICA 2000;

(2) States, local educational agencies, and communities participating in AMERICA 2000 in communications directly related to AMERICA 2000; and

(3) The news media in reporting on AMERICA 2000.

(b) If the Secretary or his designee determines that other uses of the AMERICA 2000 insignia would promote the purposes of AMERICA 2000, the Secretary or his designee may authorize, in writing, these other uses.

(c) Requests by any person or organization outside the Department for permission to use the AMERICA 2000 insignia pursuant to paragraph (b) of this section should be addressed to The Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–0100.

§ 3.9 Unauthorized uses.

The AMERICA 2000 insignia may not be used—

(a) As part of an express or implied endorsement of a commercial product, service, or enterprise; or

(b) In any context that expresses or implies—

(1) Support for any political party or candidate; or

(2) Federal endorsement of activities or elements of State or local educational programs other than AMERICA 2000.

§ 3.10 Adaptation.

The designation "AMERICA 2000" as used in the insignia may be modified by a State, local educational agency, or community described in § 3.8(a)(2) to substitute the name of that State or community in lieu of the term "AMERICA," for uses authorized by that section. An authorized adaptation of the AMERICA 2000 insignia may read, for example, "New Mexico 2000," "Dallas 2000," or "Riverside ISD 2000."

[FR Doc. 91–29667 Filed 12–13–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
December 16, 1991

Part IV

Department of Defense

Department of the Army

32 CFR Part 519

Publication of Rules Affecting the Public; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 519

Publication of Rules Affecting the Public

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a revision of 32 CFR part 519, Publication of Rules Affecting the Public (AR 310–4, 22 July 1977), to bring it in line with policy and program proponency changes and the re-organization of the Headquarters Department of the Army. It prescribes procedures and responsibilities for publishing certain Department of the Army policies, practices, and procedures in the **Federal Register** as required by statute, and for inviting public comment thereon, as appropriate. It applies to proponents of all Army publications.

EFFECTIVE DATE: March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Denton or Mr. John Roach, U.S. Army Publications and Printing Command, ATTN: ASQZ–PD, room 1050, Hoffman Building 1, Alexandria, VA 22331–0302. (703) 325–6277 or AUTOVON 221–6277.

SUPPLEMENTARY INFORMATION: This revision changes the responsibility from The Adjutant General, as contained in the current 32 CFR part 519 to the Director of Information Systems for Command, Control, Communications, and Computers (DISC4). The DISC4 is responsible for policies concerning Army announcements, rules, and proposed rules published in the **Federal Register**, and for ensuring compliance with these policies and procedures.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 519

Administrative practice and procedure.

Accordingly, 32 CFR part 519 is revised to read as follows:

PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC

Subpart A—Introduction

Sec.

Subpart B—Information to be Published in the Federal Register

Subpart C—OMB Review and Inviting Public Comment

Subpart D—Annual Review of Rules.

Appendix A to Part 519—Glossary

Authority: 5 U.S.C. 552(a)(1); 5 U.S.C. 602 et seq.; 44 U.S.C. 3501 et seq.; Executive Order 12291, 3 CFR, 1981 Comp., p. 127; Executive Order 12498, 3 CFR 1985 Comp., p. 323; and DoD Directive 5400.9 (32 CFR part 296).

Subpart A—Introduction

§ 519.1 Purpose.

This part prescribes procedures and responsibilities for publishing certain Department of the Army policies, practices and procedures in the **Federal Register** as required by statute, Executive Order, and for inviting public comment thereon, as appropriate.

§ 519.2 References.

Required and related publications and forms cited in this part are available to the general public from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 and for members of the military community, they may be reviewed at any Army post library.

(a) *Required publications.* (1) AR 25–30, The Army Integrated Publishing and Printing Program.

(2) AR 25–55, The Department of the Army Freedom of Information Act Program.

(b) *Related publications.* (1) AR 25–1, The Army Information Resources Management Program.

(2) AR 340–21, The Army Privacy Program.

§ 519.3 Explanation of abbreviations and terms.

Abbreviations and terms used in this part are explained in the glossary, appendix A.

§ 519.4 Responsibilities.

(a) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4), is responsible for policies concerning Army announcements, rules, and proposed rules published in the **Federal Register**, and for ensuring Army compliance with this part. ODISC4 will—

(1) Assist the officials listed in table 1 of this section in the performance of their responsibilities.

(2) Represent the Army in submitting to the Office of the **Federal Register** (OFR) any matter published in accordance with this part.

(3) Publish, in accordance with Office of Management and Budget (OMB) instructions, a semiannual agenda of all regulations under review, to be printed, and to be rescinded.

(b) The officials listed in table 1 of this section (to be referred to as proponents) are responsible for forwarding all drafts and revisions of Departmental Directives for determination whether their subject area of jurisdiction falls within the purview of subpart C of this part, and for taking all actions specified in the following chapters. They are also responsible for determining which matters within their areas of jurisdiction must be published in accordance with subpart C of this part.

(c) Legal officials and Staff Judge Advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained in this part.

TABLE 1.—RULEMAKING PROPONENTS

Official	Area of jurisdiction
Director of the Army Staff.	Elements of the Office of the Chief of Staff, U.S. Army.
Head of each Army Staff Agency.	Headquarters of the agency and its field operating and staff supporting agencies.
Commander, MACOM....	MACOM Headquarters and all subordinate installations, activities and units.
The Director of Information Systems for Command, Control, Communications, and Computers.	All other Army elements having proponency responsibility or jurisdiction over information resources management.

§ 519.5 Statement of compliance.

In order to ensure compliance with this part, no rule will be issued unless there is on file with the Director of Information Systems for Command, Control, Communications and Computers (SAIS–PDD), a statement that it has been evaluated in the terms of this part. If the proponent determines that the provisions of this part are not applicable, such determination will be fully justified in the accompany statement.

§ 519.6 Submission of publications for printing.

When Army-wide publications or directives are transmitted to the Commander, U.S. Army Publications and Printing Command for publication, the DA Form 260 (Request for Printing and Publication or other transmittal paper will contain a statement at section 2 of the form that the directive/regulation has been reviewed for **Federal Register** publication applicability or that it falls within the exempted category. The U.S. Army Publications and Printing Command, USAPPC, will not publish any directive/regulation unless this statement is on the DA Form 260. A copy of DA Form 260 will be submitted to USAPPC, Publishing Division in place of the statement required by § 519.5.

§ 519.7 Regulatory review.

(a) Proponents of Army regulations will periodically review their existing publications to determine whether they are achieving the policy goals of this part. This review will follow the same procedural steps outlined for the development of new regulations.

(b) In selecting regulations to be reviewed, proponents shall consider such criteria as:

(1) The continued need for the regulation.

(2) The type and number of complaints or suggestions received.

(3) The burdens imposed on those directly or indirectly affected by the regulation.

(4) The need to simplify or clarify language.

(5) The need to eliminate overlapping and duplicative regulations.

(6) The length of time since the regulation has been evaluated for the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

(c) Regulations which have been codified in the Code of Federal Regulations (CFR) for 5 years or more will be reviewed each year, after the 5th year for updating by the proponent. Lack of review by the proponent will indicate that the rule is no longer needed or in use and will be removed from the CFR.

§ 519.8 Legal authorities.

This part implements the provisions of 5 U.S.C. 552(a)(1); 5 U.S.C. 602 *et seq.*; 44 U.S.C. 3501 *et seq.*; Executive Order 12291, 3 CFR, 1981 Comp., p. 127; Executive Order 12498, 3 CFR 1985 Comp., p. 323 and DoD Directive 5400.9 (32 CFR part 296).

Subpart B—Information to be Published in the Federal Register

§ 519.9 General.

The Administrative Procedure Act, as amended, and the Federal Register Act, require that certain policies, practices, procedures, and other information concerning the Department of the Army be published in the **Federal Register** and later codified in the Code of Federal Regulations (CFR). The Regulatory Flexibility Act; Paperwork Reduction Act; and Executive Orders 12291 and 12498 also require that certain actions and studies be performed in conjunction with the publication of each regulation. Information in this subpart explains where, how, and by what authority the Army performs any of its functions that affect the public and the effect of failing to publish it.

§ 519.10 Selection of information for publication.

In deciding which information to publish, consideration will be given to the fundamental objective of informing all interested persons of the procedures on how to deal effectively with the Department of the Army. Information to be currently published will include—

(a) Descriptions of the Army's central and field organization, and the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(b) The procedures by which the Army conducts its business with the public, both formally and informally.

(c) Rules or procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability to the public adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Army.

(e) Each amendment, revision, or repeal of the information in paragraphs (a) through (d) of this section.

§ 519.11 Requirements relating to information to be published.

Once it is determined that publication in the **Federal Register** is required, the following procedures will be completed prior to publication—

(a) Under statute (5 U.S.C. 601 *et seq.*) and Executive Order 12291, an economic analysis of the effect of each regulation will be made. An economic analysis threshold has been established so as to measure the effect on small entities such as businesses, small organizations and small governmental jurisdictions. An economic analysis threshold has been established for all regulations having an annual effect on the economy of $100 million or more.

(b) Should a regulation contain a collection of information requirement, the regulation will be forwarded through the Director of Information Systems for Command, Control, Communications, and Computers (DISC4) to the OMB per Executive Order 12291 prior to publication as a proposed rule in the **Federal Register**. When a proponent seeks to publish a final rule, they must explain how any collection of information requested responds to the comments, if any, filed by the Director, OMB, or the public.

(c) Regulatory review is required by the Regulatory Flexibility Act and Executive Order 12291. The ODISC4 is the conduit by which the Department of the Army meets the requirements of review. Review is accomplished through the publication of a semiannual agenda of regulations under the review for deletion or addition to the CFR. Under the requirements of regulatory review, a proponent will notify ODISC4 when—

(1) Drafting a regulation that would affect the public.

(2) Reviewing regulations for revision or recision.

(3) Rescinding its regulation.

(4) Preparing the first draft.

§ 519.12 Exceptions.

It is not necessary to publish in the **Federal Register** any information which comes within one or more of the exceptions found within the Freedom of Information Act, 5 U.S.C. 552(b), as implemented in AR 25–55, para 3–200.

§ 519.13 Procedures.

All matters to be published in accordance with this chapter will be submitted to Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ–PG, Alexandria, VA 22331–0302.

§ 519.14 Effect of not publishing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, comply with, or be adversely affected by a matter required to be published in the **Federal Register** and not so published. A prime example of this is where legal rules which affect the general public are not published, e.g., rules affecting civil litigation produced by the Army Judge Advocate General.

§ 519.15 Federal Register indexing of terms.

Until such time as guidance can be drafted and published, personnel of the U.S. Army Publications and Printing Command, Publications Division, (703) 325–6277 or DSN 221–6277, will assist proponents in identifying major topics and categories to be used as part of the preamble section of their draft rule.

§ 519.16 Incorporation by reference.

(a) Incorporation by reference allows a proponent to comply with the requirements to publish regulations in the **Federal Register** by referring to materials already published elsewhere. The legal effect of incorporation by reference is that material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law. Incorporation by reference was authorized by Congress in the Freedom of Information Act to reduce the volume of material published in the **Federal Register** and Code of Federal Regulations.

(b) With approval of the Director of the Federal Register, the requirements for publication in the **Federal Register** may be satisfied by reference in it to other publications, provided they are reasonably available to the class of persons affected and contain the information which must otherwise be published. For example, if a publication can be purchased from the National Technical Information Service (NTIS) or a private standards organization, and may be examined at depository libraries or is available for review at Army installations, it would be reasonably available. Therefore, before a document can be incorporated by reference, the proponent must determine that it is available to the public (see 5 U.S.C. 552(a)(1); 1 CFR part 51).

(c) Material is eligible for incorporation by reference if the incorporation—

(1) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material.

(2) Is reasonably available to and usable by the class of persons affected by the publication.

(3) Does not reduce the usefulness of the **Federal Register** publication system.

(4) Benefits the Federal Government and members of affected classes.

(5) Substantially reduces the volume of material published in the **Federal Register**.

(d) Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It may, however, be utilized to avoid unnecessary repetition of published information already available to the classes of persons affected. Examples include—

(1) Construction standards issued by a professional organization.

(2) Codes of ethics issued by professional organizations.

(e) Proposals for incorporation by reference will be submitted to Commander, U.S. Army Publications and Printing Command (USAPPC), ATTN: ASQZ–PG, room 1050, Hoffman I, Alexandria, VA 22331–0302 by letter giving an identification and subject description of the document, statement of availability, indicating that the document will be reasonably available to the class of persons affected, where and how copies may be purchased and examined, and justification for the requirement to incorporate by reference. The request will be submitted to USAPPC at least 25 working days prior to the proposed date for submission of the incorporation by reference notice for the **Federal Register**.

(f) USAPPC will consult with the Director, Office of the Federal Register (OFR) concerning each specific request and will notify the proponent of the outcome of the consultation.

(g) If the Director, OFR approves the request for the incorporation by reference, a general notice will be submitted by USAPPC.

Subpart C—OMB Review and Inviting Public Comment

§ 519.17 General.

Prior to submission to the **Federal Register** for publication, all regulations affecting the public will be forwarded by this office to the Office of Management and Budget for review and approval. Once approved, public comment will be sought in accordance with subpart B of this part. This subpart sets forth the criteria and procedures for coordination with OMB and inviting public comment prior to publication.

§ 519.18 Applicability.

(a) These provisions apply only to those Department of the Army rules or petitions thereof that—

(1) Are promulgated after March 16, 1992.

(2) Must be published in the **Federal Register** in accordance with subpart B of this part.

(3) Have a substantial and direct affect on the public or any significant portion of the public.

(4) Do not merely implement a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) Subject to the policy in this section, unless otherwise required by law, the requirement to invite advance comment on proposed rules does not apply to those rules or portions thereof that—

(1) Do not come within the purview of paragraph (a) of this section.

(2) Involve any matter pertaining to a military or foreign affairs function of the United States or statute.

(3) Constitute interpretative rules, general statements of policy, or rules or organization and procedure.

§ 519.19 Procedures when preparing rules.

(a) A proposed rule to which this subpart applies will be coordinated with OMB and published along with a preamble in the Proposed Rules Section of the **Federal Register**. Public comment will be invited within a designated time of not less than 30 days prior to the intended adoption of the proposed rule.

(b) The Proposed rule and preamble will be prepared for publication by the proponent of the rule.

(c) Rulemaking proponents, other than the Army Civil Works Program, will submit the original and three copies of the proposed rule(s) and a preamble in the prescribed Federal Register format to Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ–PG, room 1050, Hoffman I, Alexandria,

VA 22331–0302. USAPPC will prepare the necessary coordination with OMB for publication approval. When approved by OMB, USAPPC will certify and submit the OCE and Army documents to the office of the Federal Register for publication as a notice, proposed rule, or final rule.

§ 519.20 OMB control number.

Each document that OMB reviews under the Paperwork Reduction Act is assigned a control number by OMB and the number becomes its identifier throughout its life.

§ 519.21 Consideration of public comment.

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate in the rulemaking through the submission of written data, views, and arguments to the proponent of the proposal.

(b) If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation may be allowed as a means of facilitating public comment. Information consultation by telephone or otherwise, may also be utilized for facilitating presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule as a manner prescribed by him or her. A hearing file will be established for each hearing. The hearing will include

(1) Public notices issued.

(2) Request for the hearing.

(3) Data or material submitted in justification thereof.

(4) The hearing transcript.

(5) Materials submitted in opposition to the proposed action.

(6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

(c) There is no requirement to respond, either orally or in writing to any individual/private person who submits comments with respect to a proposed rule. The proponent of the rule, however, may do so as a matter within his or her discretion.

§ 519.22 Procedure to finalize a rule

(a) After careful consideration of all relevant material submitted, the proponent of the rule will make such revision to the proposed rule as appears necessary.

(b)(1) If it is impractical for the rule proponent to finalize the rule after the comment period (30–60 days), the following action will be taken by the proponent—

(i) Will publish a notice withdrawing the proposed rule.

(ii) Take action to publish an interim final rule.

(2) If no action is taken by the proponent by the end of the 60 day comment period, USAPPC will withdraw the proposed rule.

(c) The rule proponent will prepare a preamble for publication with the adopted rule. The preamble will include a discussion of the comments received in response to the proposed rule and the decision to accept or reject the comments in revision to the proposed rule.

(d) After publication of a proposed rule the proponent will have one year in which to publish a final rule or withdraw the proposed rule. At the end of one year, if the proponent has not proceeded with either action USAPPC will publish a proposed rule in the **Federal Register** withdrawing the action.

(e) The original and three copies of the preamble and revised rule will be forwarded to USAPPC. USAPPC will then prepare the required certification and submit the documents to the Office of the Federal Register.

§ 519.23 Submission of petitions.

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or other repeal of any rule to which this subpart applies or would apply, if issued, as specified in § 519.18 of this part. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriation official may, at his or her direction, allow the petitioner to appear in person for the purpose of supporting the petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules as outlined in § 519.20 of this part.

§ 519.24 Cases in which public comment is impractical.

Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, he or she will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble and adopted rule. The preamble and adopted rule will then be published as prescribed in § 519.21 and submitted by USAPPC to the Office of Management and Budget for approval.

Subpart D—Annual Review of Rules

§ 519.25 Applicability.

Under previously referenced legal authority (see § 519.8), all regulations which have been codified into the Code of Federal Regulations will be reviewed under established criteria (5 U.S.C. 610 et seq.). The results of the annual rule review will be forwarded through this office to OMB for review and publication in the **Federal Register** on a semiannual schedule.

§ 519.26 Criteria.

The criteria established under 5 U.S.C. 610 et seq., for the proponent of Army regulations in the CFR is as follows—

(a) Make whatever revisions and corrections are necessary to remove ambiguities, contradictions, or imperfections both of substance and form.

(b) Eliminate variation in closely related procedural requirements.

(c) Ensure that any paperwork burden imposed by the regulations will be simplified and essential recordkeeping requirements reduced.

§ 519.27 Guidelines.

The proponent of each Army regulation contained in the CFR will review and update their regulations(s) that they have had published in the **Federal Register**. Each regulation proponent will designate a point of contact for each regulation and establish a regulation review schedule. Points of contact will also establish, in conjunction with USAPPC, a date for inclusion of information for the Semiannual Agenda published by OMB (see § 519.28). Points of contact and the regulation review schedule will be forwarded to the Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ–PD–SS, Alexandria, VA 22331–0302. The regulation point of contact will use the following factors of evaluation which are in a manner consistent with the stated objectives of applicable statutes. These factors include—

(a) The continued need for the rule.

(b) The nature of complaints or comments received concerning the rule from the public.

(c) The complexity of the rule.

(d) The extent to which the rule overlaps, duplicates or conflicts with regulations and other codified rules, including, to the extent feasible, those of state and local governments.

(e) The length of time since the rule has been evaluated or the degree to

which technology, economic conditions, or other factors have changed in the area affected by the rule.

§ 519.28 Data for Semiannual Agenda.

The Semiannual Agenda is submitted twice a year to OMB. To meet OMB's timetable, the required information will be submitted to this office by the tenth working day of January and the tenth workday of July each year. OMB requirements for the semiannual agenda are listed in paragraphs (a) through (h) of this section.

(a) Title of regulation.
(b) Agency contact—
(1) Name;
(2) Title;
(3) Address;
(4) Phone (commercial number).
(c) Effect on small business.
(d) Legal authority.
(e) Abstract of regulation.
(f) Time table for publication.
(g) Cost of compliance.
(h) Affected sections.

Appendix A to Part 519—Glossary Abbreviations

CFR—Code of Federal Regulations
DISC4—Director of Information Systems for Command, Control, Communications, and Computers
MACOM—Major Army Command
OFR—Office of the Federal Register
OMB—Office of Management and Budget
USAPPC—U.S. Army Publications and Printing Command
U.S.C.—United States Code

Terms

Rule—The whole or a part of any Department of the Army Statement (regulation, circular, directive, or other media) of general or particular applicability and future effect, which is designed to implement, interpret, or prescribe law or policy or which describes the organization, procedure or practice of the Army. See 5 U.S.C. 551(4).

Federal Register (FR)—A document published daily, Monday through Friday (except Federal holidays), by the Office of the Federal Register, National Archives and Records Administration (NARA) to inform the public about the regulations of the executive branch and independent administrative agencies of the U.S. Government. The **Federal Register** includes Presidential proclamations, Executive Orders, Federal agency documents having general applicability and legal effect or affecting the public, and documents required to be published by Act of Congress.

Code of Federal Regulations (CFR)—A collection of books published by NARA which contains a codification of the general and permanent rules published in the **Federal Register** by the executive departments, executive agencies and other establishments of the Federal Government. It consists of approximately 200 volumes, divided into 50 titles. Each title represents a broad area that is subject to **Federal regulation**. Army documents are published in Title 32, National Defense, and in Title 33, Navigation and Navigable Waters. (The **Federal Register** and the Code of Federal Regulations must be used together to determine the latest version of any given rule).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91-29686 Filed 12-13-91; 8:45 am]

BILLING CODE 3710-08-M

federal register

Monday
December 16, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amendment No. 121-212]

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the Protective Breathing Equipment (PBE) final rule published February 15, 1990 (55 FR 5548). That rule amended the PBE equipment regulations by making the following three changes: (1) It extended the compliance date for installing PBE for the use of flight crewmembers while on flight deck duty; (2) it codified a finding by the Administrator that nonpressurized airplanes must be equipped with PBE when operated in air carrier service; and (3) it postponed the date by which operators of all-cargo airplanes would have to install portable PBE for combating in-flight fires.

ADDRESSES: The protective breathing equipment final rule, amendment, and all comments may be examined in Docket No. 24792 at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, AFS-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3410.

SUPPLEMENTARY INFORMATION:

The Amendment

On February 15, 1990, the FAA amended § 121.337 of the Federal Aviation Regulations. The amendment was effective upon publication, and included a comment period that closed April 16, 1990.

Amendment No. 121-212 amended the regulations applicable to protective breathing equipment by making the following three changes: (1) It extended the compliance date for the installation of PBE units for the use of flight crewmembers while on flight deck duty to July 31, 1990; (2) it codified a finding of the Administrator that operators of nonpressurized airplanes must install PBE units for both fighting in-flight fires and for the use of flight crewmembers while on flight deck duty and established February 18, 1992, as the compliance date for the installation of approved PBE on the flight deck for nonpressurized airplanes; and (3) it postponed until February 18, 1992, the date by which all-cargo operators would be required to install multiple units of PBE on the flight deck for use in Class E cargo compartments.

Discussion of the Comments

The FAA reviewed all comments submitted to the docket that addressed the final rule amendment. Those five comments and the FAA's responses follow.

Compliance Date for PBE for Use on the Flight Deck

Air Transport Association states that the extension of the compliance date to July 30, 1990, satisfies their July 27, 1989, petition and requests that the FAA terminate action on the petition.

In its comments ATA also advises the FAA that the July 31, 1990, compliance date may be a problem for some Part 121 operators and that five ATA members probably cannot meet that date.

The FAA's Response

Following the above comment, by letter dated June 6, 1990, ATA petitioned the FAA to further extend the PBE compliance date for the installation of PBE units for the flight deck until January 31, 1991. By the end of June 1990, the FAA had received eight additional petitions to extend the compliance date. Like ATA, these operators cited supply problems with vendors. Because the FAA determined that this problem was an industry-wide supply problem and that operators had made a good faith effort to comply, the FAA determined that an extension of the compliance date was justified. Therefore, Amendment No. 121-218, was issued July 30, 1990, further extending the compliance date for the installation of PBE units on the flight deck for use by the flight crew until January 31, 1991.

PBE Units for Airplanes With Nonpressurized Cabins

ALPA states in its comments that it concurs that the PBE requirement should be for all air carrier aircraft. It further states that the compliance date should be extended to provide sufficient time for acquisition of appropriate equipment.

The Regional Airline Association (RAA) states that it had previously requested reconsideration of the requirement for PBE equipment for the flight deck of the Shorts SD3-60 aircraft. RAA restates what it believes to be the basis for reconsideration: that the aircraft is unpressurized; that the aircraft was type-certificated without a fixed source of breathing gas for flight crewmembers; that smoke and toxic gas can be evacuated from the cockpit using procedures in the Flight Manual; and that the SD3-60 operated under Part 121 has the same cockpit layout and systems that the SD3-60 has that is operated under Part 135 without PBE. RAA comments that it was disappointed to learn that FAA had decided not to accept RAA's offer to conduct a flight test in the SD3-60 aircraft and that the FAA had determined that PBE will be required to be installed on the flight deck of all U.S.-registered SD3-60 aircraft. RAA requests that it be allowed until May 31, 1990, to submit additional comments to show that the existing smoke evacuation and ventilation system is effective in removing gas and smoke from the cockpit. RAA states that it also intends to show that the added weight, down time, and resources required to install a fixed oxygen system would not significantly increase safety and would therefore not be in the public interest.

The FAA Response

The FAA has granted RAA additional time to submit its comments and has not received this information.

The FAA has determined, for the reasons stated in the finding, and restated in the preamble to Amendment No. 121-212, that both categories of PBE must be installed in the SD3-60. The established compliance date of February 18, 1992, is designed to give certificate holders operating the SD3-60 and other aircraft ample time for retrofit of the oxygen system.

PBE for Use in All-Cargo Aircraft

ATA states that Amendment No. 121-212 did not include discussion of its August 14, 1989, petition referencing all-cargo aircraft. This petition asks that the FAA delete requirements to install PBE within the Class E cargo compartment or to require redundant PBE to be installed in the cockpit for use in the Class E compartments. ATA restates the position of the all-cargo operators that Class E compartments are generally not accessible. The association believes that it is more desirable to locate units outside accessible compartments. ATA then compares the PBE requirement for all-cargo airplanes with Exemption No. 5002. In that grant of exemption the FAA agreed that it was prudent to install fire extinguishers outside certain galleys for

use in those galleys. ATA also notes that in that grant the FAA did not require redundant fire extinguishers and that this precedent was discussed in its petition. ATA agrees with the FAA's statement that "The FAA may determine that the requirement for multiple PBE units on-board all-cargo airplanes is unnecessary," but also states that it would have preferred a decision that would have granted its petition. ATA requests that the FAA take action on its petition for exemption and not go forward with any rulemaking action.

The FAA Response

ATA correctly states that in Amendment No. 121–212 the FAA did not refer to the August 14, 1989, petition submitted by ATA to delete the requirement for multiple portable PBE units for use in all-cargo aircraft. The FAA did, however, include in that amendment a lengthy discussion of the arguments presented by five all-cargo operators which were the essence of the ATA petition.

In Amendment No. 121–193 [June 3, 1987; 52 FR 20954], the FAA stated that the portable PBE unit may be located outside of the Class E cargo compartments rather than within the cargo compartment as long as it is "easily assessible for use in these areas." However, the FAA also determined that the language of the current rule "one for use in each A, B, and E cargo compartment . . ." would in some cases require multiple units. It is precisely because the FAA believes that this issue deserves further reconsideration that the requirement was postponed for 2 years. As all-cargo operators constitute a general class of operator, the exemption that ATA requests is inappropriate. Rather, in order to change the requirement, the FAA must propose an alternative requirement through the rulemaking process. In order to allow sufficient time to research the all-cargo situation, allow time for comment on a proposal, and then issue a final rule, the FAA determined that a 2-year extension is appropriate.

General Comments Concerning All-Cargo Aircraft

Mid-Pacific Air Corporation (Mid-Pacific) states that it operates the Nihon YS–11A aircraft with a crew of two and that its crews are trained not to leave the cockpit during flight. Mid-Pacific states that it has one portable PBE unit in the cockpit for a crewmember to use in case of fire since at no time would more than one crewmember be fighting a fire. Mid-Pacific believes that the number of PBE units required to be on an aircraft may depend on how many crewmembers can leave the cockpit in case of a fire in the cargo area.

Airborne Express (Airborne) comments that Class E compartments usually have limited access, and that even though a person can enter a Class E compartment, it may be impossible to gain access to the container in which the fire is located. Airborne also states that crewmembers on aircraft with only two required crewmembers would not be able to combat an in-flight fire without endangering the operation of the aircraft. Airborne believes that if a crewmember needs to investigate an on-board fire, the one portable PBE unit required for the flight deck would be sufficient. Therefore, another portable PBE unit would be redundant.

The Airline Pilots Association (ALPA) states that for all-cargo aircraft, the PBE units should be portable so that the crew is not limited in its options in coping with a fire. ALPA's reasoning is that while the crew normally would remain in their seats, there may be situations where one of them should exit the flight deck to examine a fire. ALPA also states that PBE for all-cargo airplanes should be in place by January 1, 1991, because purchase and installation of equipment for cargo compartments should not be more difficult than complying with the PBE requirement for the cabin. ALPA requests that the FAA decrease the 2-year compliance period.

The FAA's Response

The FAA appreciates the comments of Mid-Pacific, Airborne Express, and ALPA. These comments will be given further consideration in future rulemaking efforts. However, to give the FAA sufficient time to review the PBE requirements for all-cargo airplanes and to issue an NPRM if it is determined that the rule must be amended, the FAA declines to adopt ALPA's suggestion to decrease the 2-year compliance period.

Issued in Washington, DC on December 9, 1991.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 91–29913 Filed 12–13–91; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
December 16, 1991

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1991.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of December 1, 1991, of seven deferrals contained in the first special message for FY 1992. This message was transmitted to Congress on September 30, 1991.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of December 1, 1991, $806.6 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1992.

Information From Special Message

The special message containing information on deferrals that are covered by this cumulative report is printed in the **Federal Register** cited below:

56 FR 50620, Monday, October 7, 1991.

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,817.0
Routine Executive releases through December 1, 1991	-1,010.4
Overturned by the Congress.....	---
Currently before the Congress.....	806.6

Attachment

ATTACHMENT A
Status of FY 1992 Deferrals – As of December 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12–1–91
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					244,777
Agency for International Development									
International disaster assistance, Executive	D92–2	40,704		09–30–91					40,704
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91					482,378
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91					1,416

ATTACHMENT A
Status of FY 1992 Deferrals – As of December 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12–1–91
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					30,053
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		1,817,020	0		1,010,375	0		0	806,645

[FR Doc. 91–30019 Filed 12–13–91; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT A

Status of FY 1992 Deferrals – As of December 1, 1991
(Amounts in thousands of dollars)

Deferral Number	Amounts Transmitted: Original Request	Subsequent Change (+)	Date of Message	Agency Requested	OMB/ Agency Initiated	Cumulative Changes– Agency Initiated	Adjust- ments (-)	Amount Deferred 12-1-91
DEPARTMENT OF AGRICULTURE								
Forest Service								
Limitation on administrative expenses	D92-5	7,317	09-30-91					7,317
DEPARTMENT OF STATE								
Bureau for Refugee Programs								
United States emergency refugee and migration assistance fund, executive	D92-6	80,063	09-30-91					80,063
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Facilities and equipment (Airport and airway trust fund)	D92-7	1,019,375	09-30-91	1,019,375				0
TOTAL DEFERRALS		1,876,063	0	1,019,375	0	0	0	856,688

federal register

Monday
December 16, 1991

Part VII

The President

Proclamation 6391—Wright Brothers Day, 1991

Presidential

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

Presidential Documents

Title 3—

The President

Proclamation 6391 of December 12, 1991

Wright Brothers Day, 1991

By the President of the United States of America

A Proclamation

They were quiet men of modest means, but in an extraordinary display of talent, imagination, and teamwork, Orville and Wilbur Wright changed the world. Less than a century ago, on December 17, 1903, these enterprising brothers launched the age of aviation with the first controlled, manned flight in a heavier-than-air, mechanically propelled airplane. Although their hand-crafted "Flyer" covered just 120 feet on its maiden voyage over the windswept beach near Kitty Hawk, North Carolina, the Wright brothers helped lead mankind on a great journey of discovery and progress that continues to this day.

Given the routine nature of air travel today—as well as the increasing frequency of shuttle missions and other forms of spaceflight—it can be difficult for us to fathom just how remarkable the work of the Wright brothers was. When they began to experiment with airplane models and wind tunnels at their small workshop in Dayton, Ohio, many people believed that human flight would never be possible. At that time, even the automobile had not yet appeared on the American scene. Defying the skeptics, Orville and Wilbur Wright persevered through months of careful study, calculation, and design.

Indeed, long before they began constructing their first flying machine, the Wrights immersed themselves in the study of existing texts and papers on fundamental aerodynamics. They also conducted exhaustive research, moving far beyond previously accepted data and theories, many of which had proved to be unreliable. The Wrights' achievement of three-axis control in flight, inspired by watching birds of the air, laid the foundation for their success at Kitty Hawk and for the future development of all aviation.

More than a tribute to their mechanical acumen and collective genius, the Wright brothers' triumph at Kitty Hawk stands as a shining example of the power of intellect and determination over seemingly insurmountable odds. It is an example we do well to remember. Today many frontiers still stand before us. Every problem and question we face, both as individuals and as a Nation, represents new challenges and opportunities. Like Orville and Wilbur Wright and like all those Americans who have used their freedom, resources, and skill to reach high goals, we, too, can rise on the wings of industry and learning.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the 17th day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation commemorating this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 17, 1991, as Wright Brothers Day. I invite all Americans to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-30145
Filed 12-13-91; 10:10 am]
Billing code 3195-01-M

federal register

Monday
December 16, 1991

Part VIII

The President

Memorandum of December 12, 1991—Delegation of Authority Under Section 1206(b) of the Omnibus Trade and Competitiveness Act of 1988

Federal Register

Federal Register
Vol. 56, No. 241
Monday, December 16, 1991

Presidential Documents

Title 3—

The President

Memorandum of December 12, 1991

Delegation of Authority Under Section 1206(b) of the Omnibus Trade and Competitiveness Act of 1988

Memorandum for the United States Trade Representative

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code and the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418) ("the Act"), you are hereby delegated the functions vested in me by section 1206(b) of the Act (19 U.S.C. 3006(b)), to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate reports that set forth proposed modifications to the Harmonized Tariff Schedule and the reasons therefor.

The President shall retain the authority under section 1206 of the Act to proclaim modifications to the Harmonized Tariff Schedule after the layover period specified in section 1206(b) has expired.

You are authorized and directed to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
December 12, 1991.

[FR Doc. 91–30222
Filed 12–13–91; 3:30 pm]
Billing code 3195–01–M

Reader Aids

Federal Register

Vol. 56, No. 241

Monday, December 16, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6383.....61345
6384.....63499
6385.....63401
6386.....63621
6387.....63881
6388.....63863
6389.....64467
6390.....64699
6391.....65409

Executive Orders:
4456A (Revoked in part by PLO 6911).....60927

Administrative Orders:
Memorandums:
November 26, 1991.....64551
December 12, 1991.....65413
Presidential Determinations:
96-6 of December 6, 1991.....65171
96-7 of December 6, 1991.....65173
96-8 of December 6, 1991.....65175

5 CFR

330.....64469
333.....64469
532.....63865
930.....63403

Proposed Rules:
831.....63879

7 CFR

16.....64187
17.....64939
271.....63592, 63597
272.....63592, 63605
273.....63592, 63605
274.....63613
278.....63592
280.....63613
301.....63550
402.....64940
404.....64940
408.....64940
410.....64940
411.....64940
413.....64940
417.....64940
418.....64940
419.....64940
420.....64940
421.....64940
423.....64940
424.....64940
427.....64940
428.....64940
429.....64940
431.....64940
432.....64940
434.....64940
436.....64940
438.....64940
439.....64940
440.....64940
442.....64940
444.....64940
448.....64940
449.....64940
452.....64940
453.....64940
905.....61347
907.....61109, 64188, 65177
920.....64941
984.....63405
1004.....61348
1205.....64470
1240.....64475
1773.....61354

Proposed Rules:
54.....64562
235.....63882
246.....61185
274.....65114
276.....65114
277.....65114
278.....65114
301.....63550
318.....64563
907.....65023
908.....65023
918.....64565
919.....64288
989.....63469
1030.....63470
1435.....61191
1610.....61201
1717.....61201
1744.....61201
1951.....64484

8 CFR

214.....61111

Proposed Rules:
103.....61201
214.....61201
223.....61201
223a.....61201
248.....61201
264.....61201
292.....61201

9 CFR

92.....63627
94.....63865
95.....63865
325.....65179
327.....65179
381.....65179

Proposed Rules:
91.....63693

92.....63694

10 CFR

2.....61352, 64943
13.....64839
19.....61352
20.....61352, 64980
30.....61352, 64980
31.....61352, 64980
32.....61352
34.....61352, 64980
35.....61352
39.....61352, 64980
40.....61352, 64980
50.....61352, 64943
54.....64943
61.....61352
70.....61352, 64980
140.....64943

Proposed Rules:

73.....65024
820.....64290
830.....64316
835.....64334

11 CFR

Proposed Rules:

114.....64566

12 CFR

19.....63551
208.....63406
211.....63406
213.....65180
268.....64190

14 CFR

25.....63760
39.....61353, 61365, 63626, 63633, 64191, 64476, 64701, 65181
71.....61366, 61367, 64477, 65182
97.....61638, 61370, 63870, 63873
121.....63760, 65398
125.....63760

Proposed Rules:

39.....61212, 61213, 64485–64487, 65196, 65197
71.....65199
382.....65200

15 CFR

768.....64478
771.....64478
772.....64478
773.....64478
774.....64478
775.....64478
787.....64478
943.....63634

Proposed Rules:

Ch. VII.....65202

17 CFR

Proposed Rules:

240.....61391
249.....61391

18 CFR

2.....63648
4.....61137
16.....61137
154.....63648
157.....63648
284.....63648
380.....63648
382.....63408

Proposed Rules:

101.....64567
201.....64567

19 CFR

24.....63648

Proposed Rules:

4.....61214
10.....61214
19.....64580
102.....61214
111.....64580
112.....64580
122.....64580
134.....61214
146.....64580
177.....61214
353.....63696

20 CFR

416.....61287

Proposed Rules:

404.....63893
422.....63893

21 CFR

5.....64687
310.....63554
358.....63554
510.....63875, 64553
520.....64288
558.....64702
620.....63409
1308.....61372

Proposed Rules:

5.....61391
20.....61391
100.....61391
101.....61391
105.....61391
130.....61391
211.....64216
314.....64216
514.....64216
803.....64839
807.....64839
1310.....64582
1313.....64582

24 CFR

92.....65312
3282.....65183

Proposed Rules:

10.....64839
214.....64724
3500.....64446

26 CFR

1.....61159, 63410, 63420, 64980
14a.....61159
301.....64980, 65187
602.....63420

Proposed Rules:

1.....61391
1.....63471–63551

27 CFR

5.....63398, 64839

Proposed Rules:

4.....64584
5.....64553

28 CFR

0.....64192
68.....64545

29 CFR

102.....61373
1910.....64004
2619.....64982, 64983
2621.....64984
2676.....64985

Proposed Rules:

500.....64216

30 CFR

913.....64986
914.....64994, 64996
920.....61160, 63649
935.....64192

Proposed Rules:

206.....64724
904.....65030
917.....65032
918.....61215
931.....65032
934.....65033, 65034
944.....63699

31 CFR

560.....61373

32 CFR

187.....64481
188.....64481
189.....64481
190.....64481
197.....64481
204.....64481
205.....64194
214.....64481
223.....64553
235.....64481
265.....64481
271.....64481
286f.....64481
288.....64481
289.....64481
291b.....64481
296.....64481
336.....64481
337.....64481
338.....64481
519.....65392

Proposed Rules:

199.....64488

33 CFR

153.....61162
165.....63660, 65188, 65189

Proposed Rules:

100.....63700
117.....63701
130.....61216
131.....61216
132.....61216
137.....61216

34 CFR

3.....65388
668.....61330
682.....64702

Proposed Rules:

600.....63574
668.....63574

36 CFR

230.....63580
241.....63461
327.....61163, 65190

Proposed Rules:

62.....65203
242.....63702, 64404

37 CFR

1.....65142
2.....65142
202.....65000, 65190

38 CFR

Proposed Rules:

4.....61216

39 CFR

Proposed Rules:

111.....63895

40 CFR

52.....64703
58.....64482
60.....63875
61.....63875
80.....64704
81.....63464
86.....64704
131.....64876
141.....61287
142.....61287
180.....63466, 63467, 65002, 65003
185.....65002
186.....65002, 65003

Proposed Rules:

51.....65203
52.....64727–64731, 65203, 65204
55.....63848
60.....64382, 65203
61.....64217
63.....64382
72.....63002
73.....63002
75.....63002
77.....63002
86.....65035
131.....63471
180.....65035
261.....63848
264.....63848
265.....63848
302.....63848
414.....63897

41 CFR

51–1.....64002
51–2.....64002
51–3.....64002
51–4.....64002
51–5.....64002
51–6.....64002

Proposed Rules:

101–18.....64221

42 CFR

411.....61374
433.....64195

Proposed Rules:

447.....64288

43 CFR

Public Land Orders:

4.....61382
3162.....63661

6916.....64713

44 CFR

64.....65005
206.....64558

Proposed Rules:

67.....65037
81.....65037

45 CFR

Proposed Rules:

233.....64195
235.....64195

46 CFR

30.....65005
151.....65005
153.....65005
197.....65005
514.....61164

Proposed Rules:

15.....65206
401.....63891, 64839

47 CFR

0.....64714
1.....63662, 64714
2.....64842
21.....65191
22.....63662
65.....65192
73.....61168, 61169, 63663, 63664, 64207, 64211, 64842, 65194, 65195
74.....65191
80.....64714
87.....64714
90.....64842
94.....63662, 64715

Proposed Rules:

73.....61220, 63704, 64228, 64229, 65206, 65207
90.....63472

48 CFR

1832.....63877
1852.....63877
5243.....63664
5252.....63664

Proposed Rules:

35.....64922
52.....64922
225.....64211
252.....64211
501.....64212
519.....64212
552.....64212

49 CFR

37.....64214
190.....63764
191.....63764
192.....63764
195.....63764
234.....61169
571.....61386, 63676, 63682
1152.....61387

Proposed Rules:

564.....65038
567.....61392
568.....61392
571.....63473, 63474, 63914, 63921, 64733, 65038
572.....63922
1109.....64737

50 CFR

17.....61173, 64716
204.....65007
625.....63685
630.....65007
652.....61182, 61183
663.....64723
685.....63550

Proposed Rules:

17.....63705, 64229, 65207, 65209
100.....63702, 64404
Ch. II.....64234
611.....64002
672.....63487, 64002, 64288, 64738
675.....63487, 64738
681.....65209

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 690/Pub. L. 102-211

To authorize the National Park Service to acquire and manage the Mary McLeod Bethune Council House National Historic Site, and for other purposes. (Dec. 11, 1991; 105 Stat. 1652; 3 pages) Price: $1.00

H.R. 794/Pub. L. 102-212

To establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes. (Dec. 11, 1991; 105 Stat. 1655; 7 pages) Price: $1.00

H.R. 948/Pub. L. 102-213

To designate the United States courthouse located at 120 North Henry Street in Madison, Wisconsin, as the "Robert W. Kastenmeier United States Courthouse". (Dec. 11, 1991; 105 Stat. 1662; 1 page) Price: $1.00

H.R. 1099/Pub. L. 102-214

Lamprey River Study Act of 1991. (Dec. 11, 1991; 105 Stat. 1663; 1 page) Price: $1.00

H.R. 3012/Pub. L. 102-215

White Clay Creek Study Act. (Dec. 11, 1991; 105 Stat. 1664; 2 pages) Price: $1.00

H.R. 3169/Pub. L. 102-216

To lengthen from five to seven years the expiration period applicable to legislative authority relating to construction of commemorative works on Federal land in the District of Columbia and its environs. (Dec. 11, 1991; 105 Stat. 1666; 1 page) Price: $1.00

H.R. 3245/Pub. L. 102-217

Chattahoochee National Forest Protection Act of 1991. (Dec. 11, 1991; 105 Stat. 1667; 4 pages) Price: $1.00

H.R. 3327/Pub. L. 102-218

To amend title 38, United States Code, to provide for the designation of an Assistant Secretary of the Department of Veterans Affairs as the Chief Minority Affairs Officer of the Department. (Dec. 11, 1991; 105 Stat. 1671; 2 pages) Price: $1.00

H.R. 3387/Pub. L. 102-219

To amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes. (Dec. 11, 1991; 105 Stat. 1673; 1 page) Price: $1.00

H.R. 3604/Pub. L. 102-220

Greer Spring Acquisition and Protection Act of 1991. (Dec. 11, 1991; 105 Stat. 1674; 2 pages) Price: $1.00

H.R. 3932/Pub. L. 102-221

To improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes. (Dec. 11, 1991; 105 Stat. 1676; 1 page) Price: $1.00

S. 2050/Pub. L. 102-222

To ensure that the ceiling established with respect to health education assistance loans does not prohibit the provision of Federal loan insurance to new and previous borrowers under such loan program, and for other purposes. (Dec. 11, 1991; 105 Stat. 1677; 1 page) Price: $1.00

S. 2098/Pub. L. 102-223

To authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration. (Dec. 11, 1991; 105 Stat. 1678; 2 pages) Price: $1.00

S.J. Res. 198/Pub. L. 102-224

To recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II. (Dec. 11, 1991; 105 Stat. 1680; 2 pages) Price: $1.00

Last List December 13, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-013-00001-3)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[3] Jan. 1, 1991
4	(869-013-00003-0)	15.00	Jan. 1, 1991
5 Parts:			
1-699	(869-013-00004-8)	17.00	Jan. 1, 1991
700-1199	(869-013-00005-6)	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	(869-013-00006-4)	18.00	Jan. 1, 1991
7 Parts:			
0-26	(869-013-00007-2)	15.00	Jan. 1, 1991
27-45	(869-013-00008-1)	12.00	Jan. 1, 1991
46-51	(869-013-00009-9)	17.00	Jan. 1, 1991
52	(869-013-00010-2)	24.00	Jan. 1, 1991
53-209	(869-013-00011-1)	18.00	Jan. 1, 1991
210-299	(869-013-00012-9)	24.00	Jan. 1, 1991
300-399	(869-013-00013-7)	12.00	Jan. 1, 1991
400-699	(869-013-00014-5)	20.00	Jan. 1, 1991
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-013-00021-8)	12.00	Jan. 1, 1991
1900-1939	(869-013-00022-6)	11.00	Jan. 1, 1991
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
2000-End	(869-013-00025-1)	10.00	Jan. 1, 1991
8	(869-013-00026-9)	14.00	Jan. 1, 1991
9 Parts:			
1-199	(869-013-00027-7)	21.00	Jan. 1, 1991
200-End	(869-013-00028-5)	18.00	Jan. 1, 1991
10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
200-399	(869-013-00031-5)	13.00	[4] Jan. 1, 1987
400-499	(869-013-00032-3)	20.00	Jan. 1, 1991
500-End	(869-013-00033-1)	27.00	Jan. 1, 1991
11	(869-013-00034-0)	12.00	Jan. 1, 1991
12 Parts:			
1-199	(869-013-00035-8)	13.00	Jan. 1, 1991
200-219	(869-013-00036-6)	12.00	Jan. 1, 1991
220-299	(869-013-00037-4)	21.00	Jan. 1, 1991
300-499	(869-013-00038-2)	17.00	Jan. 1, 1991
500-599	(869-013-00039-1)	17.00	Jan. 1, 1991
600-End	(869-013-00040-4)	19.00	Jan. 1, 1991
13	(869-013-00041-2)	24.00	Jan. 1, 1991
14 Parts:			
1-59	(869-013-00042-1)	25.00	Jan. 1, 1991
60-139	(869-013-00043-9)	21.00	Jan. 1, 1991
140-199	(869-013-00044-7)	10.00	Jan. 1, 1991
200-1199	(869-013-00045-5)	20.00	Jan. 1, 1991
1200-End	(869-013-00046-3)	13.00	Jan. 1, 1991
15 Parts:			
0-299	(869-013-00047-1)	12.00	Jan. 1, 1991
300-799	(869-013-00048-0)	22.00	Jan. 1, 1991
800-End	(869-013-00049-8)	15.00	Jan. 1, 1991
16 Parts:			
0-149	(869-013-00050-1)	5.50	Jan. 1, 1991
150-999	(869-013-00051-0)	14.00	Jan. 1, 1991
1000-End	(869-013-00052-8)	19.00	Jan. 1, 1991
17 Parts:			
1-199	(869-013-00054-4)	15.00	Apr. 1, 1991
200-239	(869-013-00055-2)	16.00	Apr. 1, 1991
240-End	(869-013-00056-1)	23.00	Apr. 1, 1991
18 Parts:			
1-149	(869-013-00057-9)	15.00	Apr. 1, 1991
150-279	(869-013-00058-7)	15.00	Apr. 1, 1991
280-399	(869-013-00059-5)	13.00	Apr. 1, 1991
400-End	(869-013-00060-9)	9.00	Apr. 1, 1991
19 Parts:			
1-199	(869-013-00061-7)	28.00	Apr. 1, 1991
200-End	(869-013-00062-5)	9.50	Apr. 1, 1991
20 Parts:			
1-399	(869-013-00063-3)	16.00	Apr. 1, 1991
400-499	(869-013-00064-1)	25.00	Apr. 1, 1991
500-End	(869-013-00065-0)	21.00	Apr. 1, 1991
21 Parts:			
1-99	(869-013-00066-8)	12.00	Apr. 1, 1991
100-169	(869-013-00067-6)	13.00	Apr. 1, 1991
170-199	(869-013-00068-4)	17.00	Apr. 1, 1991
200-299	(869-013-00069-2)	5.50	Apr. 1, 1991
300-499	(869-013-00070-6)	28.00	Apr. 1, 1991
500-599	(869-013-00071-4)	20.00	Apr. 1, 1991
600-799	(869-013-00072-2)	7.00	Apr. 1, 1991
800-1299	(869-013-00073-1)	18.00	Apr. 1, 1991
1300-End	(869-013-00074-9)	7.50	Apr. 1, 1991
22 Parts:			
1-299	(869-013-00075-7)	25.00	Apr. 1, 1991
300-End	(869-013-00076-5)	18.00	Apr. 1, 1991
23	(869-013-00077-3)	17.00	Apr. 1, 1991
24 Parts:			
0-199	(869-013-00078-1)	25.00	Apr. 1, 1991
200-499	(869-013-00079-0)	27.00	Apr. 1, 1991
500-699	(869-013-00080-3)	13.00	Apr. 1, 1991
700-1699	(869-013-00081-1)	26.00	Apr. 1, 1991
1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1, 1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–013–00101–0)	6.50	Apr. 1, 1991
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–013–00118–4)	20.00	July 1, 1991
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–013–00124–9)	18.00	July 1, 1991
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–013–00131–1)	10.00	July 1, 1991
36 Parts:			
1–199	(869–013–00132–0)	13.00	July 1, 1991
200–End	(869–013–00133–8)	26.00	July 1, 1991
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–013–00137–1)	14.00	July 1, 1991
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
61–80	(869–013–00141–9)	14.00	July 1, 1991
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
*260–299	(869–013–00147–8)	31.00	July 1, 1991
300–399	(869–013–00148–6)	13.00	July 1, 1991
400–424	(869–013–00149–4)	23.00	July 1, 1991
425–699	(869–013–00150–8)	23.00	[6] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[7] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–013–00155–9)	11.00	July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–011–00159–9)	21.00	Oct. 1, 1990
430–End	(869–011–00160–2)	25.00	Oct. 1, 1990
43 Parts:			
*1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
*4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–011–00164–5)	23.00	Oct. 1, 1990
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
*200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–011–00167–0)	26.00	Oct. 1, 1990
1200–End	(869–011–00168–8)	18.00	Oct. 1, 1990
46 Parts:			
1–40	(869–011–00169–6)	14.00	Oct. 1, 1990
41–69	(869–011–00170–0)	14.00	Oct. 1, 1990
70–89	(869–011–00171–8)	8.00	Oct. 1, 1990
*90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
*140–155	(869–013–00173–7)	13.00	Oct. 1, 1991
156–165	(869–011–00174–2)	14.00	Oct. 1, 1990
166–199	(869–011–00175–1)	14.00	Oct. 1, 1990
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–011–00177–7)	11.00	Oct. 1, 1990
47 Parts:			
*0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–011–00179–3)	18.00	Oct. 1, 1990
40–69	(869–011–00180–7)	9.50	Oct. 1, 1990
70–79	(869–011–00181–5)	18.00	Oct. 1, 1990
80–End	(869–011–00182–3)	20.00	Oct. 1, 1990
48 Chapters:			
1 (Parts 1–51)	(869–011–00183–1)	30.00	Oct. 1, 1990
1 (Parts 52–99)	(869–011–00184–0)	19.00	Oct. 1, 1990
2 (Parts 201–251)	(869–011–00185–8)	19.00	Oct. 1, 1990
2 (Parts 252–299)	(869–011–00186–6)	15.00	Oct. 1, 1990
3–6	(869–011–00187–4)	19.00	Oct. 1, 1990
7–14	(869–011–00188–2)	26.00	Oct. 1, 1990
15–End	(869–011–00189–1)	29.00	Oct. 1, 1990
49 Parts:			
1–99	(869–011–00190–4)	14.00	Oct. 1, 1990
100–177	(869–011–00191–2)	27.00	Oct. 1, 1990
178–199	(869–011–00192–1)	22.00	Oct. 1, 1990
200–399	(869–011–00193–9)	21.00	Oct. 1, 1990
400–999	(869–011–00194–7)	26.00	Oct. 1, 1990
1000–1199	(869–013–00195–8)	17.00	Oct. 1, 1991
1200–End	(869–011–00196–3)	19.00	Oct. 1, 1990
50 Parts:			
1–199	(869–011–00197–1)	20.00	Oct. 1, 1990
200–599	(869–011–00198–0)	16.00	Oct. 1, 1990
600–End	(869–011–00199–8)	15.00	Oct. 1, 1990
CFR Index and Findings Aids	(869–013–00053–6)	30.00	Jan. 1, 1991

Title	Stock Number	Price	Revision Date
Complete 1991 CFR set		620.00	1991
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Subscription (mailed as issued)		188.00	1990
Subscription (mailed as issued)		188.00	1991
Individual copies		2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.